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A

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CROWN LAW;

COMPREHENDING

ALL THE POINTS

RELATING TO

CRIMINAL MATTERS

CONTAINED IN

THE REPORTS OF

BLACKSTONE,
BURROW,
COWPER,
DOUGLAS,
LEACH'S CROWN LAW,
LORD RAYMOND,
SALKELD,
STRANGE,
WILSON, AND THE
TERM REPORTS.

BY HARRISON NUTTALL TOMLINS,

OF THE INNER TEMPLE.

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PREFACE.

THE following Index contains all the points of law relating to Criminal Jurisprudence which are to be found in the *Term Reports*, and also the Reports of *Burrow*, *Blackstone*, *Salkeld*, *Strange*, *Lord Raymond*, *Wilson*, *Douglas*, *Cowper*, and *Leach's Cases in Crown Law*. The Compiler was originally led to the idea of forming such a collection by experiencing the utility of it when applied to his own professional avocations, and he trusts the work here offered to the public will prove useful to all those concerned in practising this branch of the Law, by enabling them easily to refer to all the cases bearing upon the same subject. The decisions in some instances are taken at considerable length, so as to shew the precise distinguishing feature of each case; this will be evidenced by referring to title ROBBERY, and the Compiler flatters himself that this will render the work additionally useful to Members of the

Profession attending the Assizes and Sessions where Law Reports are seldom to be procured. Occasional references have been made to East's Pleas of the Crown and Mr. Justice Foster's book on the Crown Law in illustration of the points reported. The cases occurring in the Term Reports have been inserted down to the time of each sheet going to press.

H. NUTTALL TOMLINS.

Grays Inn,
February, 1816.

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DIGESTED INDEX

TO THE

CROWN LAW.

ACCESSARY.

1. A person who is accessary to a felony in burning and destroying a ship, is not an offender within the meaning of 4 G. 1. c. 12. & 11 G. 2. c. 29. s. 6. unless he be the owner, captain, master, mariner, or other officer belonging to the ship.
   R. v. *Pow.* Leach, 54.
   East. P. C. 1099.
2. In murder, a person indicted as accessary before the fact, cannot be convicted of that charge upon evidence proving her to have been a *principal* by being *present* at the time of the murder, counselling and inciting the same.
   R. v. *Thomas & Winifred Gordon*, Leach, 581.

ADDITION.

1. If the addition to a prisoner's name be placed after the *alias dictus*, and not after the *first name*, the Indictment will be quashed.
   R. v. *Semple*, Leach, 469. See 3 Salk. 20. S. P.
2. But if the prisoner, on his arraignment, *plead* to the Indictment, the court held, that though the addition being placed after the *alias dictus* only, was a clear and manifest error, yet that it was cured by the prisoner's pleading.
   R. v. *Hannam*, Leach, 469. *n.*
3. *Labourer* is not a good addition for a woman.
   R. v. *Franklyn*, Ld. Raym. 1179.
4. *Servant* is a good addition, for it is certain.
   R. v. *Hoskins*, Ld. Raym. 968.
5. In *homine replegiando* no addition is necessary.
   Banbury (E.) v. *Wood*, 1 Salk. 5. 2 Salk. 987. 3 Salk. 20.
6. A peer of Ireland should not be described by his *name of dignity*, but by his *proper name* with the *addition* of his *degree* and *title*: and, therefore, where an indictment stated goods to belong to James Hamilton, esq. *commonly called* Earl of Clanbrassil, in the kingdom of Ireland, it was determined, that the more correct and perfect mode of description would have been, "James Hamilton, Esquire, Earl of Clanbrassil, in the kingdom of Ireland;" and the Judges being of opinion that in this case the words *commonly called* might be rejected as surplusage, held that the indictment was good.
   R. v. *Graham*, Leach, 619.
7. It is a good description in an indictment of a prosecutrix to call her, "Victory Baroness Turkheim," although Baroness Turkheim be her *title* only, and her name, without her title be *Selina Victoire*: if it appear that she had always acted in and been known by the appellation of Baroness Turkheim, for here was a certainty to a common intent, and the description could not possibly apply to any other person.
   R. v. *Sulls*, Leach. 1005. The court referred to Hawk. P. C. book 2. c. 25. s. 72.

ADMIRALTY.

1. If a loaded musket be fired from the land, at the distance of about 200 yards from the sea, and a man is by such shot killed in a boat which had struck on a sand bank distant about 100 yards from the shore; the offender is properly tried at an Admiralty Sessions, for the offence is committed where the death happens, and not at the place from whence the cause of the death proceeds.

   R. v. *Coombes*, Leach, 432.

2. It seems that the manslaughter of an English subject, committed in China by an alien enemy who had been a prisoner of war, but was then acting as a mariner on board an English merchant ship, cannot be tried in England under a commission issued in pursuance of stat. 33 H. 8. c. 23. and 43 G. 3. c. 113. s. 6.

   R. v. *Depardo*, 1 W. P. T. 26.

N. B. In this case no judgment was ever given and the prisoner was ultimately discharged.

AMENDMENT.

1. Errors of form in a caption of an Indictment are amendable in the same term in which the defendant comes in.

   R. v. *Hoskins*, Ld. Raym. 968.

2. In an Indictment, a variance in the addition of the obligor of a forged bond, in the *nisi prius* roll, was amended by the record of the indictment, which was right, after a special verdict, the *nisi prius* record having been made up by the clerk in court of the defendant.

   R. v. *Hayes*, Stra. 843.

3. And the court seemed to think, that this was amendable at common law, there being something to amend by.

   R. v. *Hayes*, Stra. 843.

4. A plea to an Indictment for murder may be amended after replication and before entry on the roll.

   R. v. *Knowles*, Salk. 46.

5. No statutes extend to amendments in appeals in criminal cases.

   Hoyle v. *Pitt*, 3 Salk. 38.

6. An information for forgery was allowed to be amended after issue joined without costs (the prosecutor having been admitted a pauper,) and without giving defendant leave to plead *de novo*.

   R. v. *Charlesworth*, Stra. 871.

7. The court refused on motion to quash an information, which had been exhibited by rule of court, saying, that such informations were amendable.

   R. v. *Jones*, Stra. 185.

8. A defendant pleaded in abatement to a criminal information that he was a surgeon and not a gentleman as he was stated in the information, and after debate the court gave leave to amend the information upon payment of costs.

   R. v. *Seaward*, Stra. 739.

9. Information allowed to be amended after plea pleaded.

   R. v. *Harris & al.* Salk. 47.

10. Information for forgery allowed to be amended in ten places without costs or imparlance.

    Anon. Salk. 49.

11. A verdict in civil cases may be amended by the notes of the Clerk of Assize but not in criminal cases.

    Bold's case, Salk. 55.

12. Upon a trial at bar of a traverse to an inquisition of lunacy, one of the jury was called by the name of *Henry*, and informed the court he was christened by the name of Harry, but owned he was the person summoned: it was proposed to alter it by consent but the defendant's counsel refusing the court ordered it to be amended *ex officio* by virtue of the statutes 8 H. 6. c. 12. and c. 15.

    R. v. *Roberts*, Stra. 1214.

13. Qu. whether an information to which a defendant has pleaded a wrong addition in abatement, can be amended in that particular.

    R. v. *Stedman*, Ld. Raym. 1307.

APPRENTICES.

1. Formerly it was held, that to entice an apprentice to take away his master's goods, was not indictable, unless it was laid that some of the goods were actually taken away.
   R. v. *Collingwood*, 3 Salk. 42. Ld. Raym. 1116, and see *R.* v. *Daniel*, 1 Salk. 380.
2. But now it is decided, that to solicit a servant to steal his master's goods, is a misdemeanor, though it be not charged in the Indictment that the servant stole the goods, nor that any other act was done, except the soliciting and inciting; and such offence is indictable at the sessions having a tendency to a breach of the peace.
   R. v. *Higgins*, 2 E. R. 5.
3. It is not an indictable offence to entice away an apprentice from his master.
   R. v. *Daniel*, 1 Salk. 380. 3 Salk. 191. Ld. Raym. 1116.
4. The chief justice of K. B. may grant his *warrant* to bring up the bodies of apprentices who have been improperly impressed.
   The *apprentice's case*, Leach, 242. *R.* v. *Edwards*, 7 T. R. 745. S. P.

ARSON.

1. The legal definition of arson as it stands at common law is, the maliciously and voluntarily burning the house of *another*.
   Leach. 260. East P. C. 1015.
2. The statute 9 G. 1. c. 22. does not alter the nature of the crime of arson, or create any new offence; but only more clearly excludes the principal from the benefit of clergy, than he was excluded before.
   R. v. *Spalding*, Leach, 260. *R.* v. *Breeme*, Leach. 262. East. P. C. 1016.
3. A tenant in possession under an agreement for a lease for three years, from a lessee, who held under a building lease from the tenant in fee simple of the land, is not guilty of arson, either at common law, or under a stat. 9 G. 1. c. 22. by setting the house on fire.
   R. v. *Breeme*, Leach, 261. East P. C. 1026. 4 Bl. Comm. 220.
4. In the above case, the indictment laid it to be the house, 1st, of the tenant in fee simple of the land, 2nd, of the lessee under the building lease from the tenant in fee simple, and 3rd, of the prisoner.
   Ibid.
5. A tenant from year to year is not guilty of arson by burning the house of which he is in possession.
   R. v. *Pedley*, Leach, 277. East P. C. 1026.
6. But if, by firing his own house, he thereby burns the house of another, he is guilty of the crime, and Pedley was remanded for the purpose of being tried on such an indictment.
   Ibid.
7. Where the Indictment charged the prisoner on the first count at common law, and on the second under the stat. 9 G. 1. c. 22. with setting fire to his own house, and it appeared that he was tenant in possession of the house, (a copyhold,) but that it had been surrendered to the use of a mortgage, the court held that as the indictment was for burning his *own house* it was insufficient; and that it could not be said to be the house of *another*, while the tenant continued *in possession*.
   R. v. *Spalding*, Leach, 258. East. P. C. 1025.
8. A prisoner being entitled to a right of dower (but none having ever been assigned) out of a certain house of the equity of redemption whereof her husband died seized subject to a mortgage term which equity descended to the eldest son, and the prisoner having leased the house to another person, has not such an interest in the house as will prevent her from being guilty of arson in burning it.
   R. v. *Harris*, Fost. 113. East. P. C. 1023.

9. A prison to which a dwelling house for the keeper to reside in adjoins, is a *house* within the meaning of stat. 9 G. 1. c. 22, if there be a communication although it is *separated* from the dwelling house by a *party wall*. In this case the *entrance* to the prison was by a door through such party wall, and the prisoners were sometimes allowed to sleep in the gaoler's house.

R. v. *Donnovan*, Leach, 81. Bl. Rep. 682. East. P. C. 1020.

10. And all the judges held, that the dwelling house was to be considered as part of the prison, and that the whole prison was the house of the corporation to whom it belonged.

Ibid.

11. Setting fire to paper in a *drying loft* annexed and belonging to but not being part of the *paper mill*, and no part of the mill being consumed, is not setting fire to an *outhouse* within 9 G. 1. c. 22.

R. v. *Taylor*, Leach, 58. East. P. C. 1020.

12. Setting fire to a *parcel of unthreshed wheat* is not arson within stat. 9 G. I. c. 22.

R. v. *Judd*, Leach, 544. 2 Tr. 255. S. C.

13. Upon an Indictment on 43 G. 3. c. 58. s. 1. for feloniously setting fire to a house with intent to defraud the insurers, an unstamped memorandum indorsed on a stamped policy effected by deed, is not admissible in evidence against the prisoner.

R. v. *Gilson*, 1 W. P. T. 95.

14. It is in the option of any private prosecutor to prosecute for Arson, (or any other offence mentioned in the Black Act) in any county in England.

R. v. *Mortes*, (or *Mortis*,) 3 Bl. Rep. 733. East. P. C. 1033.

ARTICLES OF THE PEACE.

1. The court will not inquire into the truth of articles of the peace, but may review them after security has been ordered, and hear objections arising upon their face.

R. v. *Vane* (Ld.) Stra. 1202.

2. The court of K. B. rejected articles of the peace which a person of Devizes offered to swear against the defendant who resided at the same place, upon the ground that he might have gone before a justice of the peace of the neighbourhood and claimed the security of the peace there, and directed the complainant so to do.

R. v. *Waite*, Burr. Rep. 780.

3. Where, upon exhibiting articles of the peace it appeared that the facts charged were done at Portsmouth, the Court of K. B. directed that upon issuing the attachment of the peace, an indorsement should be made thereon authorising and directing any justice of the peace of the county of Southampton to take the security of the peace there, and also specifying the sums in which the principals and their securities should be bound.

R. v. *Bowmaster & Epworth*, Burr. Rep. 1040. Bl. Rep. 233.

4. Upon an affidavit of a person's being above seventy and unable to travel, the court granted a *mandamus* to justices of the peace in Brecon to take security on articles of the peace exhibited against the defendant in K. B.

R. v. *Lewis*, Stra. 835.

5. Upon exhibiting articles of the peace it was objected, that the fact whereon the prosecutor grounded his apprehension of danger appeared to be committed before the Act of Grace and pardoned thereby, and that thereby the crime being gone it must be considered as never done. But by the court suppose it *were threats only* would not they be a ground for articles though they are not punishable; though the fact

is pardoned yet it may be instanced for an inducement to us to believe the defendant a dangerous person. The defendant accordingly entered into recognizance to keep the peace.
R. v. *Mendez*, Stra. 472.

6. The form of a recognizance on articles of the peace exhibited, where the fact of a marriage is disputed.
R. v. *Bambridge*, Stra. 1231.

7. One against whom articles of the peace are exhibited, is not entitled to read affidavits on his own behalf, in contradiction of the facts sworn against him in such articles.
R. v. *Doherty*, 13 E. R. 171.

ARTIFICERS.

1. An Indictment on the stat. 23 G. 2. c. 13. alledged that the defendant contracted with the manufacturer, &c. "to go out of the kingdom of Great Britain, into a foreign country, called America such foreign country not being then within the dominion of or belonging to the crown of Great Britain;" and after a verdict of guilty it was moved in arrest of judgment, that the indictment was bad for that it charged America generally to be out of the king's dominions which was notoriously otherwise; and that as some parts of America were within the dominions of the crown it ought to have been stated to what country in America the artificer was enticed. But the court held the indictment good, for it was alledged therein and found by the jury that the defendant contracted with the manufacturer to go to a foreign country called America, not being within the dominions of the crown, *non constat*, but that there might be some place called America besides the continent of America, and the verdict was conclusive.
R. v. *Myddleton*, 6 T. R. 739.

2. It was also urged, that the words in the indictment were in the copulative, workman *and* artificer, whereas in the statute they were in the disjunctive "*or*," but this objection was abandoned on shewing cause.
Ibid.

3. A defendant convicted on 5 G. 1. c. 27. and 23 G. 2. c. 13. was fined 500*l.* and imprisoned 12 months, the court saying that the latter act appeared to be a virtual repeal of the former, and that in the latter there is no discretion left in the court, the punishment directed there being peremptory.
R. v. *Cator*, Burr. Rep. 2026.

4. A defendant convicted upon *a single information* of having seduced four different artificers can only receive one punishment.
R. v. *Metcalfe*, Burr. Rep. 2027.

ASSAULT.

I. *With Intent to rob.*
II. *With Intent to injure Cloathes.*
III. *Common Assault.*

I. *Assault with Intent to rob.*

1. Where the prisoner held a pistol in his hand towards the prosecutor, who was a coachman, on his box, and bid him *stop*, but said nothing else: this was held not to be such a *demand of money* as the act requires.
R. v. *Parfait*, Leach, 23.
East P. C. 416.

2. The assault must be made upon the person against whom the felonious intent of robbery is directed; therefore where it appeared that the prisoner for some time followed a chaise in which was the prosecutor, and then presented a pistol at the post boy and bid him stop, making use at the same time of many oaths but not making any demand of money; that the carriage immediately stopped and the prisoner turned towards it, but perceiving he was pursued rode away, without doing or saying any thing to the prosecutor: the court held this not to be an *assault on the prosecutor* with intent to rob within the meaning of the act; the prisoner was therefore

acquitted, but afterwards tried on an indictment *for assaulting the post boy with intent to rob him;* but the same evidence being given, the court observed that it was very clear the prisoner *did not mean to rob the post boy,* for he made no demand on him but went up to the person in the chaise.

R. v. *Thomas,* Leach, 372.
East P. C. 417.

II. *Assault with Intent to injure Cloathes.*

1. Where a person was indicted on the stat, 6 G. 1. c. 23. s. 11. if the intent appears to be to *wound* the *person,* though the cloathes must be and were cut by the manner of executing such intent the case is not within the statute, for there must be a *primary* intent to injure the cloathes.

R. v. *Rhenwick Williams,* Leach, 597. East. P. C. 424, 5.

2. But Buller, J. thought the case came within the statute; on the authority of *Cook & Woodburn's* case. He considered that the intent of the prisoner was to wound the party by cutting through her cloathes, and therefore that he must have *intended* to have cut her cloathes; and the jury whose sole province it was to find the intent, had so found it. *Ibid.*

3. To constitute an offence within this act the assault and the injury to the cloathes must be committed at one and the same time, and therefore an indictment on this statute, must in charging the offence connect the acts by the copulatives *then and there.* *Ibid.*

III. *Common Assault.*

1. A person cannot be prosecuted upon one indictment for assaulting two persons, each assault being a distinct offence.

R. v. *Clendon,* Ld. Raym. 1572.
2 Stra. 870.

2. But in *R.* v. *Benfield & Saunders,* 2 Burr. Rep. 984. this was denied to be law and Buller J. said, "the point is where it is one act and then the offence is the same.

3. An indictment consisted of two counts, one for a riot indorsed by the jury "*ignoramus*" the other for an assault returned "*billa vera*" and held good.

R. v. *Fieldhouse,* Cowp. 325.

ATTACHMENT.

1. An attachment was granted against the judge of a corporation court for granting a new trial after a second *sci. fa.* against the bail.

R. v. *Hill & al.* 1 Salk. 201.
Hall v. *Hill,* 3 Salk. 363. S. C.

2. The court granted an attachment against an under sheriff for permitting a defendant (John Shebbeare who had received sentence to stand in and upon the pillory,) to stand on the platform of the pillory only unconfined and at his ease attended by a servant in livery holding an umbrella over his head all the time; the defendant's head, neck, hands, and arms, not being at all confined or put into the holes in the pillory, the under sheriff attending all the time with his wand and treating the criminal with great complaisance.

R. v. *Beardmore,* Burr. Rep. 792.

3. The court granted an attachment against the under sheriff of Cumberland for granting a replevin of goods distrained on a conviction for deer stealing.

R. v. *Monkhouse,* Stra. 1184.

4. The Court of K. B. granted an attachment for using contemptuous words of the court at the time of presenting a petition to the Common Council.

R. v. *Barber,* Stra. 443.

5. The court will not grant an attachment for contempt to an inferior jurisdiction.

R. v. *Birchett,* Stra. 567.

6. The Court of K. B. will not grant an attachment for disobedience of

an order of justices which had been confirmed in B. R. if it appear that obedience was for a length of time paid to that order and that then it was disobeyed; but the justices ought to make a fresh order.

R. v. *Mile End* (*Inhabs.*) 1 Ld. Raym. 676.

7. An attachment having been granted against a man he was reported in contempt, and being fined and committed in execution for it he escaped; and upon motion a new attachment was granted against him. 1 Ld. Raym. 396.

But qu. whether, instead of an attachment being granted in such case a special *sci. fa.* ought not to be sued out that the king may have execution for the fine. *Ibid.*

8. A party answering interrogatories, upon an attachment is not bound to reply to such as may tend to criminate himself.

R. v. *Barber*, Stra. 443.

9. An attachment granted for not returning an *alias mandamus*, but not without a peremptory rule to return the writ.

Coventry (Mayor's) *case*, 2 Stra. 429.

10. Where a person against whom an attachment is prayed, positively answers and denies the charge, the court always refuses the attachment without entering into the credit of the parties, or the probability of the evidence.

R. v. *Vaughan*, Dougl. 516.

ATTORNEY.

A defendant to an information under a penal statute cannot be forced by justices to appear in person, but he may entrust his defence to an attorney.

R. v. *Simpson*, Stra. 45.

BAIL.

I. i. *In Cases of Treason.*
I. ii. *In Murder and Manslaughter.*
I. iii. *In other Cases of Felony.*
II. *In Cases of Misdemeanor.*

I. i. *In cases of Treason.*

1. A prisoner committed for High Treason in North America, who is only triable before the King's Bench or under a special commission, cannot be admitted to bail under the *habeas corpus* act by justices of gaol delivery, or discharged by their proclamation for want of prosecution.

R. v. *Platt*, 1 Leach, 187.

2. A woman standing indicted for petit treason in murdering her husband was bailed, it appearing upon affidavits, that the prosecution was malicious, and there not having been any proceedings for some time either upon the indictment or the coroner's inquisition.

R. v. *Barney*, 3 Salk. 56.

3. Where four terms had passed, since the prisoner's commitment, (which was for High Treason) and one assizes in the county, out of which it had been hinted the ground of complaint arose and no prosecution against him, he was bailed himself in £10,000, and four securities in £5000 each.

R. v. *Wyndham*, Stra. 5.

4. So where the prisoner had been committed for aiding Colonel Dorington to escape out of the prison where he was committed for high treason, prisoner was bailed, there being no prosecution, and a sessions was past.

R. v. *Fitzpatrick*, Salk. 103.

I. ii. *Murder and Manslaughter.*

1. Convict in manslaughter never bailed till clergy had.

R. v. *Keat*, Salk. 103. But see *R.* v. *Lisle*, Salk. 61. 103.

2. If a man be found guilty of murder by the Coroner's Inquest yet the Court of K. B. will bail him, be-

cause the coroner proceeds upon deposition taken in writing, which the court may look into; otherwise, if a man be found guilty of murder by a grand jury, because the court cannot take notice of their evidence, which they by their oath are bound to conceal; and there is no difference as to peers and commoners as to bail.

Lord Mohun's case, Salk. 104.

3. The defendant who had killed his school-fellow at Eton, was brought to the chief justice's house by *habeas corpus;* it was returned, that he was committed by the Coroner for manslaughter, and he was therefore prayed to be bailed. But the Chief Justice said that was no reason, for if the depositions made it murder he would not bail; *e contra* if they amounted only to manslaughter he would bail, though the coroner's inquest had found it murder*. And, he said, the distinction was between the coroner's inquest where the court can look into the depositions, and an indictment where the evidence is secret. That Lord Mohun's case was in point, (though that was at Holt's chambers, and not in the Court as the book reports it,) and that the lords bailed him after an indictment for murder was found; and he said, that himself refused to bail Mr. Clifton because he thought the depositions made it murder, though the inquest was manslaughter only.

The bail were four in £4000. The Chief Justice said it had been usual to take them in a sum, or body for body; and that where they are taken *corpus pro corpore*, it was a mistake to imagine the bail were to be hanged if the principal ran away: but that the method is to amerce them.

R. v. *Dalton*, Stra. 211.

4. One of two appellees in murder, was bailed, he having been acquitted on the indictment, which the court said was a strong presumption of innocence, and that they would bail in all cases after an acquittal on the indictment unless the judge was dissatisfied with the acquittal. Defendant was bailed by two persons *corpus pro corpore*, in £1000 each. As to the other appellee the court said there was no foundation to bail, and denied that it was of course to bail in an appeal.

Castell (widow) v. *Bambridge & Corbett*, Stra. 854, 5.

In the above case, it was agreed, that in an appeal by writ on the civil side two bail only are required, that had it come on the crown side by *certiorari*, there must have been four. *Ibid.*

5. But where the appellee was convicted on the indictment but pardoned on the report of the judge, he was refused to be bailed after issue joined on the appeal, the presumption being against him.

Pyle v. *Grant*, Stra. 858.

6. The defendant as keeper of a prison had been tried and acquitted on four indictments for murder, charged to have been committed by confining prisoners in an improper place; he was committed to answer a fifth charge, and moved to be admitted to bail on producing *copies* of the informations and affidavits of the former trials and identical nature of the offences, but the court would not look into the copies of the informations, and refused to bail the prisoner.

R. v. *Acton*, Stra. 851.

7. Prisoner who had stabbed a gentleman, moved the day before she was to be brought up by *habeas* to be bailed, to have a physician and surgeon of her own to attend the dressing of the wound, in order to satisfy the court that the person stabbed was out of danger. But the court said there never was a motion of this nature, that the course was for the friends of the party injured to lay his condition before the court when they oppose the bailing, and if they did not do it then the

* Hil. 12 G. 3. B. R. It was held by Lord Mansfield, that the depositions, and not the inquisition were to guide the discretion of the court.

court might order such an attendance for their own satisfaction, but the present defendant had no right to ask it.

R. v. *Salisbury*, Stra. 546.

8. A person committed upon an indictment for murder was refused to be bailed within less than three weeks of the sessions, it appearing upon affidavits that the evidence did *affect* him, though perhaps not sufficiently so to prove him guilty. And Holt, C. J. and Gould J. said, the allowing the favour of bail might discourage the prosecution, and the court's declaring their opinion of the evidence before hand must prejudice the prisoner on the one side, or the prosecutor on the other.

Anon. Salk. 104. 3 Salk. 58. S. C.

9. Where, upon an indictment for murder and a special verdict found, and removed into K. B. the prisoner before argument obtained a pardon, and pleaded it, which was allowed; that court will not require bail for his appearance to answer an appeal under 3 H. 7. c. 1. though there be an affidavit produced that the brother and heir was beyond sea, but expected in time.

R. v. *Chetwynd*, Stra. 1203.

10. And the court were of opinion, that the present case was not such as the stat. 3 H. 7. c. 1. meant: and it being to subject the prisoner to a second trial which before he was not, he not being indictable till the time to appeal was elapsed, till this act gave such prosecution, it was therefore to be construed strictly, and confined literally to an acquittal by verdict (Kel. 104.) upon an arraignment at the king's suit; and it was material that no instance could be shewn of requiring such bail upon pleading a pardon; on the contrary *Bowen* in Mich. 8 Ann, was discharged without bail. *Acquittal* they said must be understood *in a course of law*, and not an interposition of the Crown's mercy.

Ibid.

11. Upon the authority of Salk. 104. and *R.* v. *Dalton*, and Mr. Clifton's case, this defendant was bailed after having been committed by the coroner for manslaughter, it appearing by the depositions to be no more.

R. v. *Magrath*, Stra. 1242.

12. Appellee in an appeal of murder cannot be bailed after conviction, unless the appellant will actually consent.

Reeve v. *Trindal*, Stra. 402.

13. It is not sufficient that the appellant *does not oppose* the bailing.

Ibid.

I. iii. *In other Cases of Felony.*

1. The Court of K. B. has a right to bail in all cases of felony even of murder if they see occasion, where there is any doubt either upon the law or the fact of the case.

R. v. *Marks et al.* 3 E. R. 163, 165.

2. And the court has a discretionary power to bail in all cases whatever.

R. v. *Rudd*, Leach, 138.

3. But they will not bail a prisoner committed for *repeated forgeries*, especially when the time of trial is very near. *Ibid.*

4. The *ill health* of such prisoner is not *of itself* a sufficient circumstance to induce the court to admit to bail. *Ibid.*

5. And in order to induce the court to to bail in case of sickness, it must be a *present indisposition arising out of the confinement*.

R. v. *Wyndham*, Stra. 4.

6. The court will not bail an offender who is willing to become a witness for the crown, unless upon a full and fair disclosure by such offender of all they know.

R. v. *Rudd*, Leach, 138. See title *Evidence*.

7. Though the warrant of commitment be informal, yet, if upon the depositions returned, the court see that a felony has been committed, and that there is a reasonable ground of charge against the prisoners, they will not bail but remand them.

R. v. *Marks & al.* 3 E. R. 165, 166.

8. Although it be not necessary to

state in a warrant of commitment for felony that the act was done *feloniously*, yet unless it sufficiently appears to the court that a felony has been committed, they are bound to bail the defendant.

R. v. *Judd*, 2 E. R. 255. Leach, 544.

9. Therefore where this defendant was committed for being accessary with one W. R. committed to gaol on the oath of witnesses as well as on his own confession, for wilfully and maliciously setting fire to a *parcel* of unthreshed wheat in the night, he was bailed, on the ground that it was not an offence under the stat. 9 G. 1. c. 22. which only uses the words *cock, mow, or stack* of corn.

R. v. *Judd*, 2 E. R. 255. Leach, 544.

10. The defendant who had been committed for having with force and arms, made an assault upon the prosecutor, with intent feloniously to steal take and carry away from the person, &c. was bailed; because he was not charged with any offence within the stat. 17 G. 2. c. 22. which enacts, "that if any person shall make an assault, *with an offensive weapon, or by menaces, or in a forcible manner demand money, &c.* from any other person, with a felonious intent to *rob* such person, he shall be guilty of felony."

R. v. *Remnant*, 5 T. R. 169. Leach, 663.

11. One committed for treason or felony ought to enter his prayer the first week of the term, or day of the sessions, next after his commitment, or he shall not have the benefit of the *habeas corpus* act.

Lord Aylesbury's case, Salk. 103.

12. The defendant was committed for an highway robbery and applied to be bailed, and the prosecutor attending insisted he was the man, and though eight affidavits of credible persons proving him to be at another place at the time the robbery was sworn to were read, yet the court refused to admit him to bail, but ordered him to remain till the assizes.

R. v. *Greenwood*, Stra. 1137.

13. Lord Baltimore, charged with a rape was bailed in K. B. to appear at the assizes.

R. v. *Baltimore* (Ld.) *et al.* Burr. Rep. 2179.

14. The prisoners were committed for aiding and assisting Lord Baltimore in a rape, but they were not charged either by the oath or warrant of commitment with being *present*, and therefore, they were accessaries before the fact. The court bailed them.

R. v. *Ann Darby and Eliz. Griffenburgh*, 4 Burr. Rep. 2179.

15. The court of K. B. upon an application by a prisoner to be admitted to bail, will not form any judgment whether the facts amount to felony or not, but merely whether enough is charged to justify a detainer of the prisoner and put him on his trial; the practice of the court being, that even when the commitment is regular they will look into the depositions to see if there is a sufficient ground laid to detain the party in custody; and if there is not they will bail him. So also where the commitment is irregular, if it appear that a serious offence has been committed, they will not discharge or bail the prisoner, without first looking into the depositions to see whether there is a sufficient evidence to detain him in custody.

R. v. *Horner*, 1 Leach, 305.

16. Bail for a felon convict, in a civil action, may surrender him to the marshal in discharge of themselves.

R. v. *Vergen*, Stra. 1217.

17. So bail for one indicted may have him committed in discharge of them.

Anon. 1 Salk. 105.

18. A person offering himself as bail for another charged with felony, may be asked, whether he has not stood in the pillory for perjury, because the *answer* cannot subject him to any punishment.

R. v. *Edwards*, 4 T. R. 440. Leach, 496. *n.*

19. Upon motion upon an indictment, the court may dispense with the de-

fendant's joining in recognizance with the bail, and allow him to find others, who will give bail for him.

Smith v. *Villars*, 1 Salk. 2.

II. *In Cases of Misdemeanors.*

1. The House of Lords having voted the defendant guilty of a breach of privilege, in publishing a libel upon a member of their house, and having sentenced him to pay a fine, and to be imprisoned for six months, and until such fine was paid, which commitment was returned into the court of K. B. upon the *habeas* sued out by the defendant, the court refused to discharge the defendant; the adjudication by the House of Lords being a conviction, and no court having the power to discharge the defendant.

R. v. *Flower*, 8 T. R. 314.

And Lord Kenyon said, "we were bound to grant the *habeas* writ; but having seen the return to it, we are bound to remand the defendant to prison, because the subject belongs *ad alium examen*." *Ibid.*

2. The Court of C. P. cannot bail or discharge a prisoner committed by warrant of the Speaker of the House of Commons, for a breach of privilege of that house expressed in the warrant, during the sessions.

Case of *Brass Crosby, Esq.* Mayor of London, 3 Wils. 188.

3. It seems that one committed by the House of Commons for a contempt, cannot be bailed by the Court of K. B. (*Dissent.* Holt, C. J.)

R. v. *Paty*, 2 Salk. 503.

Nor discharged, case of *Brass Crosby, Esq.* Bl. Rep. 754. Lord Raym. 1105. See tit. *Commitment.*

4. Where persons have become bail for a defendant indicted for perjury, and the condition of the recognizance has become forfeited, the court will not discharge the recognizance of the bail till the prosecutor be paid his costs, although the defendant be in custody upon an attachment for a contempt in non-payment of such costs.

R. v. *Lyon*, Burr. Rep. 1461.

5. A man may be bailed upon an *habeas corpus* to appear *de die in diem*, until the matter of the return be determined upon, and then to surrender himself to prison, if the judgment of the court were accordingly.

R. v. Davison, 1 Ld. Raym. 603. 1 Salk. 105.

6. The defendant was convicted for keeping an ale-house without a licence, and was thereupon committed for a month, as the act directs. After he had lain a fortnight he brought a *certiorari*, and upon the return of it he was admitted to bail, the court being of opinion that if the conviction was confirmed, they could commit him in execution for the remainder of the time.

R. v. *Reader*, Stra. 530.

7. Defendant having been convicted of a seditious libel, moved to be bailed being in a very ill state of health; and he was accordingly bailed, the Chief J. saying that the offence was so great that an adequate punishment might endanger his life, and to lessen the judgment would be an ill precedent, and that the court would give judgment when defendant was better.

R. v. *Bishop*, Stra. 9.

8. The court refused to bail a defendant who was committed in execution for a fine imposed for a forcible entry, as the defendant had brought a writ of error and assigned error in person.

R. v. *Layton*, Salk. 105.

9. Bail refused to bail a defendant who was committed till the assizes, pursuant to 13 & 14 Car. 2, c. 11. s. 6. for a misdemeanor, in forcibly obstructing a custom-house officer in the execution of his duty; and the court observed, that, under this act, the party committed could not be bailed as a *right*.

R. v. *Dunn*, 4 *Burr.* 2641.

10. Upon articles of the peace being exhibited, the court may require bail for such a length of time as they shall think necessary for the

preservation of the peace, and are not confined to a twelvemonth.
R. v. *Bowes*, 1 T. R. 696.

11. Where the court had at first required bail for fourteen years, they afterwards lessened the time to two years on its appearing to them that an information was depending against the defendant on the same account, which must necessarily be determined within that time.
1 T. R. 696.

12. A commitment by a justice of peace for 14 days, under the Vagrant Act, 17 G. 2. c. 5. is a commitment in execution, and the party is not entitled to be bailed.
R. v. *Brooke & Robinson*, 2 T. R. 190.

13. The sheriff has no authority to take a *bond* for the appearance of persons arrested by him under process issuing upon an indictment at the quarter sessions for a misdemeanor; he can only take a *recognizance* for their appearance.
Bengough v. *Rossiter*, 4 T. R. 505. Affirmed in Cam. Scac. Eyre, C. J. of C. B. *dissent.* 2 H. B. 418.

14. At common law the sheriff could not bail any persons indicted before Justices of the Peace, though he might bail those indicted before him at his torn. Stat. 23 H. 6. c. 9. was passed to compel him to take bail where he might have done, and neglected to do so. But stat. 1 Ed. 4. c. 2. takes away his power of bailing altogether, and requires him to return all Indictments, taken before him at his torn, to the justices of the next sessions. 4 T. R. 505.

15. (But see *contra*, the opinion of Eyre, C. J. of C. P. 2 H. B. 426. 435. who allowed, however, that the practice of bailing by the sheriff in such cases had been long discontinued.)

16. Bail during advisement is discretionary in the court, and if defendant pleads a false plea, though the court on application for bail cannot judicially take notice of it, yet it will lead their discretion.
Dr. Watson's case, Salk. 105.

17. Two days notice of bail on an attachment need not be given; any reasonable notice is sufficient.
R. v. *Hall*, Bl. Rep. 1110.

18. In criminal cases, justification of bail is not necessary. *Ibid.*

19. One committed for a misdemeanor, in forging endorsements on exchequer bills was bailed.
R. v. *Marriot*, 1 Salk. 104.

BAIL BOND.

1. The sheriff may take a bail-bond upon an arrest upon an attachment issued out of B. R. for a contempt.
R. v. *Dawes*, 1 Ld. Raym. 722. 1 Salk. 608.

2. And the party is not compellable to take an assignment of such bail bond from the sheriff, but may proceed against him by amercement, if the defendant does not appear, according to the condition of such bond. *Ibid.*

3. But if the defendant be in town, the court will send a tipstaff to bring him into court, *sedente curia.* *Ibid.*

BANK NOTES.

It is not an offence within the stat. 3 W. & M. c. 9. s. 4. and 5 Anne, c. 31. s. 5. to receive Bank notes, knowing them to have been stolen, for they could not be at that time in the contemplation of the legislature as *goods or chattels.*
R. v. *Morris*, Leach, 525. See *Miller* v. *Race*, 1 Burr. 457.

All bonds, bills, and other securities, were then choses in action, and could not be included, by any construction, within the meaning of the words goods and chattels; for these words could only refer to the receit of such things as were goods and chattels at the time those acts were passed.
Leach, 529.

BANK (SERVANTS OF.)

1. By the common law, it was not larceny for a cashier of the Bank of England to embezzle an India bond committed to his care, pursuant to stat. 12 G. 1. c. 32. which enforces the orders of the Court of Chancery that master's in chancery shall deliver into the Bank of England, the *bonds*, &c. of the suitors, and that upon paying in such bonds, &c. the master shall take a certificate thereof from one of the cashiers.

R. v. *Waite*, Leach, 33.

2. But by stat. 15 G. 2. c. 13. s. 12. the offence is now felony without benefit of clergy. (See title *Chose in Action.*)

BANK STOCK.

Obtaining and endorsing a dividend warrant at the Bank, in the name of the stockholder, is such a "*personating* a proprietor, and *thereby endeavouring* to receive the dividend," as to bring the offender within the provisions of the stat. 31 G. 2. c. 22. s. 77. although the offender is apprehended before any attempt is made by him to receive at the pay office the money on the dividend.

R. v. *Parr*, Leach, 487.

BANKRUPT.

1. An Indictment on 5 G. 2. c. 30. s. 3. against a bankrupt for not surrendering himself to be examined, must state that a commission had *duly issued;* [to say that it was *awarded* is not sufficient,] that he was required to surrender to the commissioners, *or the major part of them;* and that they did sit and were commissioners *of bankrupts;* and the names of the commissioners must be stated in the notice.

R. v. *Frith*, 1 Leach, 12.

2. Defendant being indicted, for that he, being a bankrupt, and brought before the commissioners, refused to give them an account of his effects; the defence on the trial was that he was an infant at the time of the debts contracted, and therefore could not be a bankrupt for debts which he was not obliged to pay; and defendant therefore was acquitted.

R. v. *Cole*, 1 Ld. Raym. 443.

3. A bankrupt committed on *mesne process*, on an *extent from the crown*, and also under the commissioners' warrant by virtue of stat. 5 G. 2. c. 30. s. 16. for not duly conforming, to their satisfaction touching the disclosure of his effects, may be discharged, *quoad* the commitment of the commissioners, if they have mistaken *improbable* for *unsatisfactory* answers; for however insufficient such answers may be, the commissioners must receive them as satisfactory, their power extending only to cases where the bankrupt refuses to answer at all, or does not fully answer: and they cannot take upon themselves to decide whether the answers be true or false.

R. v. *Pedley*, 1 Leach, 365.

4. A general answer by a bankrupt, that he has lost 1880*l.* by selling goods under prime cost is not satisfactory, especially if falsified by subsequent confessions of the disposal of different sums for other purposes.

T. P. Langham's case,
Bl. Rep. 919.

5. That a man cannot positively recollect a fact, but should rather believe the affirmative, is a full and satisfactory answer by a bankrupt to the commisioners, and being committed by them for refusing to give any other answer, was discharged by the Court of K. B.

Thomas Miller's case,
Bl. Rep. 881.

6. A bankrupt, who gives *general* and *unsatisfactory* answers to the commisioners may be committed by them until he submit to answer fully such questions as have been

put to him by them: and the court of K. B. will not in such case discharge him from such commitment.

R. v. *Perrott*, Burr. Rep. 1122.

The *examination* of a bankrupt is not confined to be *within* the time limited for him to come in and surrender and submit to be examined.

Ibid.

7. Where a bankrupt in answer to questions from the commisioners as to the disposal of large sums of money by him, merely particularises a woman by name upon whom he had spent 5000*l.* in twelve months, and mentions the times when he sent it her, that another person was privy to it, that the woman was since dead, &c. these are such unsatisfactory answers as justify the commissioners in committing the bankrupt, till he submit, and the Court of K. B. refused to discharge him.

R. v. *Perrott*, Burr. Rep. 1216.

8. A bankrupt was discharged upon a *habeas* brought, he having been committed by the commissioners for having notoriously *prevaricated* in his examination on oath before them, no interrogatories having been exhibited to him; copies of which the court held the bankrupt ought to have, and time to consider of his answers.

R. v. *Nathan*, Stra. 880.

BLACK ACT.

1. On an Indictment on 9 G. 1. c. 22. for *maliciously* shooting at another, the offence must be committed under such circumstances as in construction of law would have amounted to the crime of murder, if death had ensued from such act.

R. v. *Gastineaux*, Leach, 465.

2. Persons present aiding and assisting in shooting at another, although they do not actually shoot or carry fire-arms for that purpose, are principals within the penalties of the Black Act.

Coleheaver's case, Leach, 76.

3. And so where two were indicted for killing a mare, and the evidence was, that one held the mare whilst the other gave the mortal wound, all the Judges (with the exception of Mr. Justice Foster) held that both the prisoners were principals.

R. v. *Mudwinter & Sims*, Fost. 415. Leach, 78. *n.*

4. An Indictment on this act for shooting at a person, must charge that the offence was done WILFULLY AND *maliciously*, for those words must be understood as a description of the offence; and to say *unlawfully*, *maliciously*, and *feloniously*, is not sufficient.

R. v. *Davis*, Leach, 556, see note (*a*) Leach, p. 557.

5. A private prosecutor on 9 Geo. 1. c. 22. has an option to prefer his indictment in such county as he shall think most favourable to the ends of justice.

R. v. *Mortis*, Leach, 385.

But he cannot exercise this right for the purposes of injustice and oppression, for the words of the act are, for the *better and more impartial trial*, &c. *Ibid.*

6. The stat. 16 G. 3. c. 30. imposing a summary penalty for the first offence of simply killing deer in a park enclosed, and making the second offence felony, is a virtual repeal of 9 G. 1. c. 22. as to hunting or killing deer in a park, unaccompanied by the circumstance of being armed and disguised.

R. v. *Davis*, Leach, 306.

BRIBERY.

1. Bribery still remains a crime at common law, and the legislature never meant to take away the common-law crime but to add a penal action; and this appears by the words of the above act, "or being *any otherwise* lawfully convicted thereof."

R. v. *Pitt & Mead*, Bur. Rep. 1335. 1 Blackst. Rep. 380.

2. And a conviction upon an information granted by the court of K. B. is just the same as if the defendants had been convicted upon an indictment.

BRIDGES.

I. *Who are bound to repair.*
II. *Certiorari.*
III. *Indictment, Pleas, Evidence, &c.*

I. *Who are bound to repair.*

1. The inhabitants of the county are of common right bound to repair all bridges, because they are for the benefit of the county; therefore if the inhabitants of a county who have always repaired a foot bridge, pull it down, sell the materials, and receive the produce thereof, and in lieu of the foot bridge build up a bridge for horses and carriages, they are bound to keep such latter bridge in repair; for, as it has become useful to the public in general the county shall repair it.
   R. v. *Inhabitants*, W. R. York, 5 Burr. 2594. 2 Bl. Rep. 685.
2. The inhabitants of the county being *primâ facie* liable to repair all public bridges within it, are therefore as it seems bound to repair an ancient horse bridge, unless they can throw the onus upon some one else.
   R. v. *Salop*, (*Inhabitants*) 13 East. 95.
3. Where townships have so enlarged a bridge, which they were before bound to repair as a foot bridge, they shall still be liable *pro ratâ*.
   2. E. R. 356.
4. The inhabitants of a county are bound to repair every *public* bridge within it; unless when indicted for the non-repair of it, they can shew by their plea that some other person is liable; and every bridge *in a highway* is by the stat. 22 H. 8. c. 5. deemed a *public* bridge for this purpose. Therefore, where Queen Anne, in 1708, for her greater convenience, built a bridge on the Thames at Datchet, in the common highway leading from London to Windsor, in lieu of an ancient ferry which belonged to the crown, and she and her successors maintained and repaired the bridge till 1796, when, being in part broken down, the whole was removed, and the materials converted to the use of the king, by whom the ferry was re-established as before: the Court of K. B. held, that the inhabitants of the county of Bucks, who, in answer to an indictment for the non repair of that part of the bridge lying in the county of Bucks, pleaded these matters, and shewed that the bridge was a common public bridge, were nevertheless bound to rebuild and repair it.
   R. v. *Inhab. of Buckinghamshire*, 12 E. R. 192.
5. By the common law, declared and defined by the stat. 22 H. 8. c. 5. and subsequent acts, where the inhabitants of a county are liable to the repair of a public bridge, they are liable also to repair to the extent of 300 feet of the highway at each end of the bridge; and if indicted for the non-repair thereof, they can only exonerate themselves by pleading specially that some other is bound by prescription or tenure to repair the same.
   R. v. *Inhab. of York, W. R.* 7 E. R. 588. affirmed in Error. 5 W. P. T. 284.
6. A new and substantive bridge of public utility, built within the limits of one county, and adopted by the public, must be repaired by the inhabitants of that county, although it be built within 300 feet of an old bridge repairable by the inhabitants of another county, who were bound in course under the stat. 22 H. 8. c. 5. to maintain such 300 feet of road, though lying in the other county.
   R. v. *Devon, Inhab.* 14 E. R. 377.
7. If a bridge be of public utility and used by the public, the public must repair it, though built by an individual: *aliter*, if built by him for his own benefit, and so continued without public utility, though used by the public.
   R. v. *W. R. Yorkshire, Inhabs.* 2 E. R. 342.
8. Where an individual builds a bridge, which he dedicates to the

public by whom it is used, the county are bound to repair it.
2 E. R. 356.

9. The county is liable to repair a bridge built in the highway and used by the public above forty years, though originally erected for the convenience of an individual.
R. v. *Glamorgan C. Inhab.*; *cor* Ld. Kenyon C. J. at Hereford in 1788. 2 E. R. 356. *n.*

10. The Court of K. B. strongly intimated their opinion, (though the point was not directly decided,) that if a bridge used for carriages, though formerly adequate to the purposes, were not of sufficient width to meet the public exigencies, owing to the encreased width of carriages, the burthen of widening it must be borne by those who are bound to repair the bridge.
R. v. *Cumberland C. Inhab.* 6 T. R. 194.

11. On error brought in this case in the House of Lords, the Lord Chancellor intimated doubts upon the point; but the judgment was affirmed, on the ground that after verdict it must be presumed the over-narrowness of the bridge arose from its having been contracted from its ancient width.
Cumberland C. Inhab. v. *R.* (in error,) 3 B. & B. 354.

12. Where the king enlarges the boundaries of a city, by annexing part of the county to the county of the city the inhabitants of the county of such city are bound to repair bridges lying within such enlarged boundaries, though such bridges were at the time of the making of stat. 22 H. 8. c. 5. within the county at large.
R. v. *Norwich Inhab.* Stra. 177.

13. The true ground of this decision seems to have been, that the stat. lays no *absolute charge til the bridge is in decay*: so that when the stat. was made, though the bridges were within the county of Norfolk, yet as they were not in decay, the stat. had no operation on them before they were annexed to the city of Norwich.

14. The words of annexation in this case being *usque ad Pontem. Hartford ad exteriorem pontem rivi*, this bridge being the furthest of those out of repair was held to be included in the new boundaries; for *usque ad* is only used to shew the circumference and the other words take in the river. *Ibid.*

15. The stat. only gives a *concurrent* not an *exclusive* jurisdiction to the sessions; and therefore an information lies in K. B. for non-repair of a bridge. *Ibid.*

16. The county or riding is liable to the repair of a bridge built by trustees under a turnpike act, there being no special provision for exonerating them from the common-law liability, or transferring it to others; though the trustees were enabled to raise tolls for the support of the roads.
R. v. *Inhabs. W. R. Yorkshire*, 2 E. R. 342.

17. A prescription that the lords of the manor ought to repair a bridge, is good, because the manor may have been granted to be held by the service of repairing the bridge before the stat. *Quia Emptores Terrarum.*
R. v *Bucknall*, Ld. Raym. 792.

18. But it must be laid to be *ratione tenuræ.*
S. C. Ld. Raym. 804.

19. And it is by reason of the demesnes of the manor; and therefore if part of the demesnes be granted to I. S. he will be obliged to contribute to the repairs: but the indictment may be against any of them, and though it appears upon the evidence that another is liable also, yet the defendant must be convicted, and that was done in this case. *Ibid.*

20. If a person who is bound to repair a bridge *ratione tenuræ* of certain lands, lets the lands, his lessee will be bound to repair the bridge.
R. v. *Bucknall (Sr. John,)* Ld. Raym. 804.

21. If a manor be held by the service or tenure of repairing a common bridge or highway, and that

manor afterwards comes to be divided into several hands, every one of these alienees, being tenants of any parcel either of the demesnes or services, shall be liable to the whole charge, and are contributory among themselves; and though the lord of the manor might upon the several alienations agree to discharge those that purchased of him of such repairs, yet that shall not alter the remedy for the public, but only bind the lord and those that claim under him. As the whole manor, and every part of it in the possession of one tenant was once chargeable with the reparation, so it shall remain notwithstanding any act of the proprietor. It shall not be in his power to apportion the charge whereby the remedy for the public benefit should be made more difficult, or by alienations to persons unable, to render it in respect to the parts which should come into such hands, quite frustrate.

Q. v. *Dutch. Buccleugh & al.* 1 Salk. 357.

22. Although a manor subject to such charge comes into the hands of the crown, yet the duty upon it continues; and any person claiming afterwards under the crown the whole manor or any part of it, shall be liable to an indictment or information for want of due repairs. *Ibid.*

23. Indictment against a county for not repairing a bridge; plea, that I. S. is liable *ratione tenuræ*. The plea is not sustained by evidence that the estate of I. S. was part of a larger estate, which part I. S. purchased of a former owner who retained the rest in his own hands, and as well before the purchase as since has repaired the bridge.

R. v. *Oxford* (co.) *Inhab.* 16 E. R. 223.

But where in such case the county were found guilty, the court gave leave to stay the judgment upon payment of costs, until another indictment was preferred in order to try the liability. *Ibid.*

24. If a man be charged to repair *ratione tenuræ*, he may throw it on the parish by the general issue.

Per Eyre, J. in *R.* v. *Norwich Inhab.* Stra. 184. *Sed* q. this.

25. The Medway Navigation Company, being empowered to make the river navigable and to take tolls, and to amend or alter bridges or highways, leaving them or others convenient in their room, having destroyed a ford across the river in the common highway by deepening its bed, and having built a bridge there, are bound to keep such bridge in repair.

R. v. *Kent* (Co.) *Inhab.* 13 E. R. 220.

26. So where a canal company authorised by an act of Parliament to make the river *Bain* navigable, and to make and enlarge certain navigable cuts, and build bridges and other works connected with the navigation, and to *discontinue* any of the works before authorised to be erected, having for their own benefit made a navigable cut and deepened a ford which crossed the highway, and thereby rendered a bridge necessary for the passage of the public, which was accordingly built at the expense of the company in the first instance, are bound to maintain the same, and the burden cannot be thrown upon the county at large.

R. v. *Lindsey* (*Inhab.*) 13 E. R. 317.

27. The stat. 49 G. 3. c. 84. appoints trustees for taking down the old and building a new bridge over the river Tone, and empowers them to take tolls; and that it shall be lawful for them, out of the monies received, to build a new bridge, &c. and vests the property in the old and new bridge during the continuance of the act, in the trustees; and that as soon as the purposes of the act shall be executed, *then and from* thenceforth the tolls shall cease, and the bridge, &c. shall be repaired by such persons as are by law liable to repair the old bridge. Held, that during the time the trustees were engaged in executing the powers of the act, and before they

had completed them, the county was not liable to repair the bridge.

R. v. *Somerset Inhab.* 16 E. R. 305.

28. Though a charter of Edward 6. granted upon the recited prayer of the inhabitants of the borough of Stratford upon Avon, "that the king would esteem them, the inhabitants, worthy to *be made, reduced,* and *erected* into a body corporate and politic," and thereupon proceeding, "to *grant* (without any word of *confirmation,*) unto the *inhabitants* of the borough, that the same borough should be a free borough for ever thereafter," and then proceeding to incorporate them by the name of the bailiffs and burgesses, &c. would without more, imply a new incorporation: yet where the same charter recited that it was an *ancient borough,* in which a guild was theretofore founded and endowed with lands *out of the rents, revenues,* and *profits* of which a *school* and *alms-houses* were maintained, and a *bridge* was *from time to time kept up and repaired;* which guild was then dissolved, and its lands lately come into the king's hands: and further reciting, that the *inhabitants of the borough, from time immemorial,* had enjoyed *franchises, liberties,* free customs, *jurisdiction,* privileges, exemptions, and immunities, by reason and pretence of the guild, and of charters grants and confirmations to the guild, *and otherwise,* which the inhabitants could not then hold and enjoy by the dissolution of the guild and for other causes, by means whereof it was likely that the *borough* and its government would fall into a worse state without a speedy remedy: and thereupon the *inhabitants of the borough* had prayed the king's favour for *bettering the borough and government* thereof and *for supporting the great charges* which from time to time they were bound to sustain, to be deemed worthy to be made &c. a body corporate, &c. and thereupon the king after granting to the inhabitants of the borough to be a corporation (as before stated,) granted them the same *bounds and limits as the borough* and the *jurisdiction* thereof from *time immemorial* had extended to.

And the king, "willing that the *almshouses* and *school* should be kept up and maintained as theretofore, (without naming the *bridge*) and that *the great charges to the borough and its inhabitants* from time to time *incident* might be thereafter *the better sustained and supported,* granted to the corporation the lands of the late guild.

And it further appearing by parol testimony as far back as living testimony went, that the *corporation* had always *repaired* the *bridge.*

Held that, taking the whole of the charter and the parol testimony together the preponderance of the testimony was, first, that this was a *corporation by prescription,* though words of creation only were used in the incorporating part of the charter of Edw. 6.; 2dly. that the burden of repairing the bridge was upon such prescriptive corporation during the existence of the guild before that charter; though the guild out of their revenues had in fact repaired the bridge which was only in ease of the corporation and not *ratione tenuræ*; and that the corporation were still bound *by prescription* and not merely by *tenure*; and therefore that a verdict against them upon an indictment for the non-repair of the bridge charging them as *immemorially* bound to the repair of it, was sustainable.

R. v. *Stratford upon Avon* (*Mayor, Aldermen, and Bargesses of the Borough of,*) 14 E. R. 348.

29. If a new district is added to and made part of a county of a city, the inhabitants of the county of the city must repair a public bridge within such district.

R. v. *Inhab. Liberty St. Peter, in York,* Ld. Raym. 1249.

30. The justices of a particular district within a city cannot make a rate for repairing a bridge; but

such rate must be made by the justices of the city at large. *Ibid.*

II. *Certiorari.*

1. An indictment for not repairing a county bridge may be removed by *certiorari at the instance of the prosecutor*, notwithstanding the general words of stat. 1 Anne, c. 18. s. 5. that no such indictment shall be removed by *certiorari*.

R. v. *Inhab. Co. Cumberland*, 6 T. R. 194. affirmed on error in Dom. Proc. 3 B. & P. 354.

2. Many instances have occurred where information and indictments for such offences have been removed by *certiorari* by the prosecutors, some of which happened soon after the passing of the stat. of Ann. 6 T. R. 194.

3. A *certiorari* to remove an indictment for not repairing a bridge may be granted where any others than the inhabitants of a county are bound to repair it, the stat. of Ann. extending only to bridges where the county is charged to repair; for where a private person or parish is charged and the right will come in question, the act of W. & M. had allowed the granting a *certiorari*.

R. v. *Inhab. of Hamworth*, Stra. 900.

III. *Indictment, Plea, Evidence, &c.*

1. An indictment for not repairing a bridge, is sufficiently certain if it state that "the western part of the bridge containing half of it", was out of repair.

R. v. *Sainthill*, 1 Salk. 359. Ld. Raym. 1174.

2. But it seems to be the better way to state the length of the part which is out of repair. *Ibid.*

3. Such an indictment should state what kind of bridge it is, whether for foot passengers or for horses and carriages; and therefore, where the indictment was *occidentalem partem communis pontis* pedalis *continent. dimid. partis in communi semita, &c.* the court, on error brought, reversed the judgment, for that *pons ped alis* did not signify a *foot-bridge*, but a bridge *a foot long*; it should have been *pedestris*.

R. v. *Sainthill*, 1 Salk. 359. Ld. Raym. 1174.

4. The county in order to exonerate themselves from the burden of repairing a bridge lying within it, must shew by their plea that some other person is liable to repair.

R. v. *Inhab. of Wilts*, 1 Salk. 359. Ld. Raym. 1174.

5. Where to an indictment against a riding for not repairing a public carriage bridge, the plea alleged that certain townships had *immemorially* used to repair the said bridge, evidence that the townships had enlarged the bridge to a carriage bridge, which they had before been bound to repair as a footbridge, will not support the plea.

M. 28 G. 3. 2 E. R. 356. *n.*

6. A bridge built in a public way, without public utility, is indictable as a nuisance; and so it is if built colourably in an imperfect or inconvenient manner, with a view to throw the *onus* of rebuilding or repairing it immediately on the county.

R. v. *Inhab. W. R. York*, 2 E. R. 342.

7. On not guilty pleaded to an information for not repairing a bridge, the defendant may controvert every thing the prosecutor is bound to prove: and if a man would discharge himself on a particular account, he must plead it specially, but not where the common right is his defence.

R. v. *Norwich Inhab.* Stra. 177.

8. If upon an information against the inhabitants of a county of a city, for non-repair of a bridge, two of the inhabitants thereof come in the name of all the inhabitants *of the city* and plead, the issue is well joined, for the court will take them to be the same persons.

R. v. *Norwich Inhab.* Stra. 177.

9. Upon an information against the inhabitants of a county for not repairing a bridge, the court held that the attorney-general might take a *venire facias* to any adjacent county,

and that it might be *de corpore* of the whole, or *de viceneto* of some particular place therein next adjoining.

R. v. *Inhab. Wilts.* 1 Salk. 380. Ld. Raym. 1174.

10. An action will not lie by an individual against the inhabitants of a county for an injury sustained from a county bridge being out of repair.

Russel v. *Men of Devon.* 2 T. R. 667.

11. Upon not guilty pleaded to an indictment against a county for not repairing a public bridge, it is competent to the defendants to give evidence of the bridge having been repaired by private individuals, in order to shew that it was not a county bridge. *R.* v. *Northampton Inhab.* 2 Mau. and Sel. Rep. 262.

BULLION.

The prisoner a working goldsmith was indicted at the O. B. 1664. for falsifying plate by putting in too much alloy and then corrupting one of the assay-master's servants to help him to the proper marks with which he stamped his plate, and being convicted was fined 100*l.* and adjudged to stand three times in the pillory and forejudged his trade that he should not again use it as a master workman.

R. v. *Fabian*, East. P. C. 194.

See now 12 G. 2. c. 26. which regulates the standard of gold and silver wares.

BURGLARY.

I. *What is a sufficient Breaking.*
II. *What is a sufficient Entering.*
III. *What shall be said to be the Mansion House.*
IV. *Whose Dwelling-House it shall be laid to be.*
V. *Lodging Rooms deemed separate Mansions.*
VI. *Indictment, Pleas, Evidence, and Verdict.*

I. *What is a sufficient Breaking.*

1. Where a servant opened his lady's chamber which was fastened with a spring lock, with a design to ravish her, it was held to be burglary.

R. v. *Gray*, 1 Stra. 481. East. P. C. 488.

2. At a meeting of the Judges in 1690 upon a special verdict they were divided upon the question, whether the breaking open the door of a cupboard let into the wall of the house was burglary or not.

Fost, 108. East. P. C. 489.

3. If a servant in a house in the night-time, open the street door and let in another person who robs the house, and afterwards the servant open the door and let out the other person, it is burglary in both, although the servant did not go out of the house.

R. v. *Cornwall*, 2 Stra. 880. East. P. C. 486.

4. And all the Judges were of opinion that this case was not distinguishable in principle from that which had been often ruled and allowed, and mentioned in Hale P. C. 81. of one watching at the end of a street while others go into the house.

2 Stra. 880.

II. *What is a sufficient Entering.*

1. To cut a hole in the night-time in the window shutters of a shop, part of a dwelling-house, and by putting the hand through the hole to take out goods, is a sufficient entry to constitute burglary.

R. v. *Gibbons*, Fost. 107. East. P. C. 490.

2. It seems doubtful whether if a man shoot without the window, and the bullet come in, it is a sufficient entry, and the better opinion appears to be that it is not, for the entry must be *for the purpose of committing a felony*, and the breaking must be such as will afford the burglar *an opportunity of entering so as to commit the intended felony*; according to which, where thieves had bored a hole *through* the door with a center-bit, and part of the chips were found in the inside of the house, by which it was apparent that the end of the center-bit had penetrated into the house, yet as the

instrument had not been introduced for the purpose of taking the property or committing any other felony, the entry was ruled incomplete.

R. v. *Hughes & al.* Leach, 452. East. P. C. 490.

III. *What shall be said to be the Mansion House.*

1. *Domus mansionalis* doth not only include the dwelling-house but also the out-houses that are parcel thereof, as barn, stable, cow-houses and dairy-houses, if they are parcel of the messuage, though they are not under the same roof adjoining or contiguous to it, (1 Hale, 58.) and it was agreed by all the Judges, *temp.* Hyde, Ch. J. that the breaking and entering in the night-time a bakehouse eight or nine yards distant from the dwelling-house and only a pale reaching between them was burglary, *Castle's case*, 1 Hale, 558.; but if the out-house be far remote from the dwelling-house so as not to be reasonably esteemed parcel thereof, as if it stand a bow-shot off, and not within or near the curtilage of the chief house, it is not *domus mansionalis* nor any part thereof.

See Leach, 171, 2, *n.* and the authorities there cited.

2. It is not burglary to break in the night an out-house occupied with a dwelling-house, but separated therefrom by an open passage eight feet wide, and not connected with the dwelling-house by any fence enclosing both the out-house and dwelling-house.

R. v. *Garland*, Leach, 171. East. P. C. 493.

3. A shop adjoining built close to a house and under the same roof, (there being a court-yard before the house and shop enclosed by a brick wall three feet high, which included both the house and shop and in which wall was a gate fastened by a latch which served as a communication to both house and shop,) is part of the dwelling-house although there be no internal communication between the shop and the house, and although no person sleep in the shop.

R. v. *Gibson*, *Mutton*, and *Wiggs*, Leach, 396, East. P. C. 491, 508.

4. Burglary cannot be committed in a house under repair, which was not inhabited by the owner or any one else, although part of the owner's property be then there deposited; for until he take possession with intent to inhabit it cannot be considered as his mansion or dwelling-house.

R. v. *Lyons & Miller*, Leach, 221. East P. C. 497.

5. In the report of this case in East. P. C. 497. (which seems to be the most correct one,) it is stated that there were *not any goods* in the house and the Judges were clearly of opinion that it was not burglary upon that indictment charging the intent to steal, which must be the goods *then and there* being, and where nothing was in the house nothing could be stolen.

6. Also it seemed to be the sense of the Judges, and Eyre *B.* declared it to be his opinion that though some goods might have been put into the house, which is the case put in Kely. 46. and there doubted, yet if neither the party nor any of his family had inhabited it, it would not be a mansion house in which burglary could be committed.

East. P. C. 498.

7. In December session 1782, at the O. B. a house new built and finished in every respect except the painting glazing and flooring of one garret, and a workman constantly employed by the prosecutor (the builder of the house) sleeping in it for the purpose of protecting it, but no part of the prosecutor's domestic family having taken possession of it, was on the authority of *Lyon & Miller's* case held not to be the dwelling-house of the prosecutor.

R. v. *Fuller*, Leach 222, note (*a*). East. P. C. 498.

8. Nor can a house be deemed the dwelling-house of the prosecutor, where he only deposited merchandize therein but had never slept therein himself, but had only employed two hair-dressers who were in no situation of servitude to him, to sleep therein, which they had done for six nights preceding and on the night of the breaking, to take care of the goods in the house.

R. v. *Harris*, Leach, 808. East. P. C. 498.

9. Therefore clearly a house in which the owner had deposited his household goods, but in which neither he nor any of his family or servants had ever slept, cannot be considered as a dwelling-house, so as to satisfy an indictment for burglary.

R. v. *Thompson*, Leach, 893. East. P. C. 498.

10. Where a person holding a house in the country for a term of years at which he resided in the summer, his chief residence being in London, which house he left at the latter end of the summer and removed with his whole family to London, and brought away considerable part of his goods; soon after which the house in the country was broken open and rifled, whereupon he removed the remainder of his goods to town except a few articles of small value, leaving no bed nor any thing for the accommodation of a family; and the prosecutor stating that at the time of disfurnishing his country house he had not come to any settled resolution whether to return there or not, but that he was rather inclined totally to quit the house and let it: held not to be his dwelling-house in which burglary could be committed.

R. v. *Nutbrown & al.* Fost. 76. East. P, C. 496.

11. The prosecutor being possessed of a house in Westminster wherein he dwelt, took a journey into Cornwall with intent to return and sent his wife and family out of town, and left the key with a friend to look after the house; after he had been gone a month, no person being in the house, it was broken open in the night and robbed of divers goods, he returned a month after with his family and inhabited there: adjudged burglary.

R. v. *Murry & Harris*, East. P. C. 496. Fost. 77.

12. A manufactory carried on in the center building of a great pile, in the wings of which several persons dwelt, but there being no internal communication between the center building and the wings, though the roofs of all were connected and the entrance of all were out of the same common enclosure: held not to be a dwelling-house in which burglary could be committed.

R. v. *Eggington & al.* East. P. C. 494. 2 B. & P. 503.

IV. *Whose Dwelling-House it shall be laid to be.*

1. The servant of three partners in trade had weekly wages, and three rooms assigned to him for lodging, over the bank and brewery office of the partners, with which it communicated by a trap-door and a ladder; a burglary being committed in the banking-room, it was held that it was well laid to be in the dwelling-house of the three partners.

R. v. *Stock & al.* 3 Taun. 339.

2. If burglary be committed in one of two adjoining houses belonging to two partners, of which the rent and taxes are paid from the partnership fund, it must be laid to be the separate mansion of its inhabitant if there be no internal communication from the one to the other.

R. v. *Jones*, Leach, 607. East. P. C. 504.

3. If burglary be committed in any of the apartments at Whitehall, it should be laid to be the king's mansion-house called Whitehall.

Leach, 364. note (*b*). East. P. C. 500.

4. So for breaking a chamber in Somerset House, where it was laid to be the dwelling-house of the persons who lodged in it, but the Court said, it should have been laid to be

the dwelling-house of the Queen mother.

R. v. *Burgess*, Leach, 364. note (*b*). O. B. Session, 14 Car. 2. East. P. C. 500.

5. So in an indictment on stat. 12 Ann. c. 7. the indictment averred it to be the dwelling-house of a Mr. Bunbury who occupied the whole of the upper part of the Invalid Office at Chelsea, being an office under government who paid the rent and taxes, and the court held that it was not Mr. Bunbury's dwelling-house. *R.* v. *Peyton*, Leach, 364.

6. So for a burglary committed in a house of the African Company, it was laid to be the dwelling-house of one of the officers who together with others had apartments there, but held bad; for although the officer resided in the apartment broken open, yet it could not be said to be his mansion-house, because he and others inhabited the house merely as servants and officers of the company, and it ought to have been laid to be the dwelling-house of the company.

R. v. *Hawkins*, Leach, 364. note (*b*). O. B. Session, 1704. East. P. C. 501. Fost. 38.

V. *Lodging-Rooms deemed separate Mansions.*

1. A lodging room in which a burglary is committed may be laid to be the dwelling-house of the person occupying the room, if the owner of the premises do not inhabit any part of the house.

R. v. *Rogers*, Leach, 104. East. P. C. 506.

2. And upon reference to the Judges it was said, that if under such circumstances it was not to be considered as the dwelling-house of the person who rented the apartment, houses in that situation, which was extremely common in London, would be altogether unprotected against burglary: but if the owner had inhabited any part of the house, the renters would have been lodgers or inmates, and it must then have been charged to have been the dwelling-house of the owner of the premises.

Ibid. 2 Salk. 232. Cowp. 4.

3. The same point was decided in *R.* v. *Carrol*, 1 Leach, 272. East. P. C. 506. and in *R.* v. *Trapshaw*, Leach, 478. which was a case of housebreaking under stat. 3 & 4 W. & M. c. 9. s. 1. wherein the above cases of *Rogers* and *Carrol* were referred to as perfectly analogous to that of *Trapshaw*.

4. Burglary may be committed in lofts built over coach-houses if they are converted into lodging-rooms and there is an outer door to them common to all the inmates *(though such outer door be never fastened,)* for they are in such case the mansion-houses of their respective inhabitants, although they were originally intended as hay lofts.

R. v. *Turner*, Leach, 342. East. P. C. 492.

VI. *Indictment, Pleas, Evidence, and Verdict.*

1. The name of the owners of the house in which burglary is charged to have been committed, must be accurately stated or the indictment will be bad for that part of the charge. *R.* v. *White*, Leach, 286. East. P. C. 513.

2. And if incorrectly stated, the prisoner cannot be found guilty even of stealing to the amount of 40*s.* in the dwelling-house. *Ibid.*

3. Upon an indictment for burglary, the prisoner may be acquitted of the burglary and found guilty of stealing in the dwelling-house to the amount of 40*s.* under the stat. 12 Ann. c. 7.

R. v. *Withall & Overend*, Leach, 102. East. P. C. 517.

4. An indictment for burglariously breaking and entering the dwelling-house of A. with intent to steal the goods of B. although no person of that name had any goods in the house, it being in fact a mistake of one name for another, is good; and the Court said "this mistake is not material *as to the burglary*, for that part of the offence being laid *with*

intent to steal, the gist of it was the breaking and entering the house with such an intent, and that it was quite immaterial to whom the property which the prisoner intended to steal belonged.

R. v. *Jenks*, Leach, 896.

5. If in an indictment for burglary the actual felony is laid to constitute the burglary, and not the *intention* to commit a felony, an acquittal of the burglary by necessary consequence includes in it a charge of stealing in the dwelling-house to the amount of 40*s.* but not of the simple larceny.

R. v. *Comer*, Leach, 43.
East. P. C. 516.

6. This point seems to have arisen from a mistake in the mode of entering the verdict on the record, which was, "puts himself on the country: jury say, guilty of felony only in stealing goods and chattels to the value of 15*0l.* from the dwelling, not guilty of the burglary."

Leach, 43. East. P. C. 516.

7. If the entry had been "jury say not guilty of breaking and entering the house in the night time, but guilty of the rest of the indictment," the prisoner might then have been convicted of stealing goods to the value of 40*s.* in the dwelling-house, and would have been thereby deprived of his clergy. *Ibid.*

8. Upon an indictment for burglary *and stealing goods*, it appeared there were no goods stolen but a burglary committed *with intent to steal*, but not being so laid, the indictment was held insufficient.

R. v. *Vandercomb & Abbot*, Leach, 816, East. P. C. 514.

9. An acquittal upon an indictment for burglary in breaking, &c. *and stealing* the goods of A. and of B. and C. cannot be pleaded in bar to an indictment for burglary in the same dwelling-house on the same night *with intent* to steal the goods of A. and B.

R. v. *Vandercomb & Abbot*, East. P. C. 515. Leach, 828.

10. *Auter fois acquit*, cannot be pleaded in bar to an indictment for burglary, unless the facts charged in the second indictment would if true have sustained the first.

East. P. C. 519.

11. If a prisoner be charged with a burglary *and stealing* the goods, on failing to prove the burglary the prosecutor cannot be admitted to prove on the same indictment that a larceny was committed at any time antecedent to the time at which the burglary was laid to have been committed.

R. v. *Vandercomb & Abbot*, Leach, 816.

12. In the above cases, *prior to the time at which the burglary was laid to have been committed*, a quantity of goods were found packed up ready to be taken away; but at dark when the prisoners were apprehended in the house, no perceptible alteration had been made in the situation of any of the articles in the house: and it appears that the above decision turned upon the failure of proving any *asportation* by the prisoners at *the time when they were seen and apprehended in the house:* for the Court said if the prisoners had been proved, *after breaking the house* to have removed any of the articles, or if they had been proved to have removed those things that were tied up in bundles from their several places above stairs into the passage below, that would have been a sufficient removal to answer the *larceny*, if those articles had been included in the indictment. Leach, 820.

13. Upon error brought upon an outlawry for burglary, the defendant must sue a *sci. fa.* against all the lords mediate and immediate*; or the more expeditious way is, that he may suggest upon the record that he has no lands, and if the Attorney General confesses this, defendant has no occasion to sue out a *sci. fa.*

R. v. *Arthur*, 1 Ld. Raym. 154.
2 Salk. 495.

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* To shew cause why he should not have restitution of his lands.

CATTLE.

1. Horses, mares, and colts, are included under the word *cattle*, as used in the stat. 9 G. 1. c. 22. (which is to be considered as an extension of 22 & 23 Car. 2. c. 7. making it a single felony to kill horses by night,) and therefore in an indictment for killing a mare and a colt, it is not necessary to aver that they are cattle within the meaning of 9 G. 1. c. 22.

R. v. *Paty*, Leach, 83. East. P. C. 1074. Bl. Rep. 721. See *R.* v. *Mott*, Leach, 85, *n.* East P. C. 1075. and *R.* v. *Moyle*, East P. C. 1076. *S. P.*

2. As the statutes 14 G. 2. c. 6. and 15 G. 2. c. 34. mention both *heifer* and *cow* in describing the several animals they were designed to protect, the *one* must have been used in contradistinction to the *other;* and therefore an indictment for stealing a *cow* is not supported by evidence that the prisoner stole a *heifer*.

R. v. *Cook*, Leach, 123.
East. P. C. 616.

3. The stat. 31 Eliz. c. 12. s. 5. taking away clergy as well from the accessary after as before the fact, extends only to such persons as were in judgment of law *accessaries at the time the act was made*, namely accessaries at common law; and therefore a person knowingly receiving a stolen horse, who is made an accessary by some later statutes, is not ousted: this was agreed by all the Judges at a conference in Easter term, 2 Ann.

Fost. C. L. 372.
East. P. C. 616.

4. To constitute the offence of maliciously maiming cattle under the stat. 9 G. 1. c. 22. it must appear that the maiming was committed from "*a malicious motiev to the owner of the cattle.*"

R. v. *Pearce*, Leach, 594.
East. P. C. 1072.

And see *R.* v. *Shepherd*. Leach, 609. East. P. C. 1073. and *R.* v. *Kean*, Leach, 595. *n.* East. P. C. 1073 S. P.

5. Persons present aiding and assisting in killing cattle, are by the construction of 9 G. 1. c. 22. ousted of clergy the same as if they gave the mortal stroke.

R. v. *Midwinter & Sims*, Leach, 78. East. P. C. 1076.

On this case Mr. J. Foster dissented from the rest of the Judges, and see his learned arguments thereon.

Fost. C. L. 415.

CERTIORARI.

1. A *certiorari* lies to all inferior jurisdictions, and therefore it does to remove a judgment in the court of the Isle of Ely.

Cross v. *Smyth & al.* 1 Salk. 147.
3 Salk. 79.

2. The power of the Court of K. B. to grant a *certiorari* can never be taken away but by express words in a statute.

R. v. *Moreley & al.* Burr. Rep. 1041.

3. A *certiorari* will never be granted to remove an indictment found before justices of gaol delivery, without some special cause be shewn.

Anon. 1 Salk. 144.

4. Nor where the indictment is found at the assizes.

Q. v. *Knatchbull & al.* 1 Salk. 150. *R.* v. *Bestland*, Stra. 1202. S. P.

5. The Court of K. B. refused a *certiorari* to remove an indictment for a misdemeanor and proceedings thereon at the assizes after conviction and before judgment, which was prayed for the purpose of applying for a new trial on the Judge's report of the evidence, upon the ground of the verdict being against evidence and the Judge's direction.

R. v. *Oxford* (*County*) *Inhab.* 13 E. R. 411.

6. And so it is of the Old Bailey: and if such *certiorari* should be granted, and the cause suggested should afterwards appear false, a *procedendo* would be awarded. 1 Salk. 144

7. A *certiorari* was granted to remove an indictment at the O. B. for a cheat, upon the defendants undertaking to try it the same term, which would be a benefit to the prosecutor, who by the course of the O. B. could not try it so soon.
R. v. *Nehuff*, 1 Salk. 150, 1.

8. But it was denied where the indictment at the O. B. was only for falsely pretending that a person of no reputation was Sir J. T. *per quod* the prosecutor was induced to trust him, and *per cur.* As you move on behalf of the defendant we must have a more particular reason.
R. v. *Gunston*, Stra. 582.

9. A *certiorari* was granted to remove an indictment at the O. B. for forgery, the defendant appearing to be a man of good repute and the prosecution upon slight grounds.
R. v. *Wells*, Stra. 549.

10. It is sufficient cause to remove an indictment for a libel from the O. B. by *certiorari* into K. B. that the Recorder thinks himself affected by the libel.
R. v. *Orme & Nutt*, Ld. Raym. 486.

11. A *certiorari* does not lie to remove an indictment for felony from the general sessions at Hicks's Hall, without the consent of the prosecutor.
R. v. *Kingston*, (*Dutch.*) Cowp. 283.

12. A *certiorari* lies to a Welch quarter sessions of the peace to remove an indictment against several persons for not repairing an highway.
R. v. *Inhabs. Clace*, or *R.* v. *Lewis & al.* 4 Burr. 2456.

13. So it lies to remove proceedings before justices of the peace in Wales.
R. v. *Glamorganshire Inhab.* Ld. Raym. 580. case of *Cardiffe-bridge*, 1 Salk. 146.

14. So it lies on the part of the defendant to the Grand Sessions at Anglesea, upon an indictment for embracery, upon an affidavit to induce a suspicion that a fair trial could not be had at Anglesea.
R. v. Lewis, Stra. 704. See *R.* v. *Cowle*, Burr. Rep. 862, 3. and *R.* v. *Inhabs. Clace*, Burr. Rep. 2459.

15. The court will grant a *certiorari* to remove an indictment for a misdemeanor from the Great Sessions in Wales into this court.
R. v. *Griffith*, 3 T. R. 658.

16. The defendant finding fault with a *mandamus*, altered it before delivery to the party to whom it was directed, and being indicted at the assizes at Exeter for a forgery, moved for a *certiorari*, but the prosecutor not assenting the court refused it.
R. v. *Elford*, Stra. 877.

17. A *certiorari* granted to remove an indictment for felony from a corporation sessions, upon affidavits shewing that defendant could not have a fair trial there.
R. v. *Faule*, Ld. Raym. 1452.

18. A *certiorari* to remove an indictment found against an excise officer and two others at the Dover sessions for a riot and assault, was granted to the defendant on the motion of the Attorney General without any affidavit.
R. v. *Stannard*, 4 T. R. 161.

19. A *certiorari* lies to remove a presentment in a court leet; and when removed the presentment is traversable in B. R.
R. v. *Roupell*, Cowp. 458.

19. A *certiorari* was granted to remove an indictment, for not doing the statute labour in the highway.
R. v. *Greenshaw*, Stra. 849.

20. When the words of a statute clearly take away the *certiorari*, if the Court has granted it by mistake, they will make a rule that the writ be superseded, *quia improvidè emanavit* the return taken off the file and the orders which had been removed by the writ remanded.
R. v. *Micklethwayte*, Burr. Rep. 2522.

21. The general words of the stat. 25 G. 2. c. 36. s. 10. that no indictment for keeping a disorderly house shall be removed by *certiorari*, do not restrain *the crown* from removing the indictment by *certiorari*: there being nothing in the act to

shew that the legislature intended that the crown should be bound by it.

R. v. *R. Davies*, 5 T. R. 626.

22. An Indictment found at the quarter sessions on stat. 1 W. and M. c. 18. for disturbing a dissenting congregation, may be removed into the Court of K. B. by *certiorari* before verdict.

R. v. *Hube*, 5 T. R. 542.

23. A *certiorari* lies on the Conventicle Act, 22 Car. 2. c. 1.

R. v. *Moreley & al.* Burr. Rep. 1041.

24. A defendant may have a *certiorari* to remove a conviction upon an Indictment before justices of the peace, after a verdict for the crown, and before judgment, but grant it is in the discretion of the Court to grant a *procedendo*, it being reasonable that when a defendant has stood a trial before justices, they should pass judgment also.

R. v. *Potter*, or *Porter & al.* Ld. Raym. 937. 1 Salk. 149.

25. A *certiorari* lies on a judgment given by the consent of the College of Physicians, against a person for mal practice.

Groenvelt v. *Burwell*, 1 Salk. 144. 200.

26. A *certiorari* will not lie to remove the poor's rate itself.

R. v. *Inhab. Uttoxeter*, Stra. 932.

27. So the Court refused a *certiorari* to remove a poor's rate made in lieu of a former one, which had been quashed.

R. v. *Shrewsbury Inhab.* Stra. 975.

28. An order of removal having been made by two justices, a *certiorari* sent to the sessions is good, though there did not appear to be any act done at the sessions, because the justices are supposed to return all the orders they make to the sessions, where they are to be recorded.

R. v. *Warminster, Inhabs.* Stra. 476.

29. A *certiorari* to remove a conviction of recusancy, denied.

Dr. Sand's case, 1 Salk. 145.

30. A *certiorari* to remove an order, on 7 & 8 W. 3. c. 29. for a parish at large to repair an highway, the money levied on the inship not being sufficient, was denied.

R. v. *Eckershall Inhabs.* Stra. 944.

31. Where the sessions upon an application to adjust a quantum of loss, refuse so to do, on the ground, that one sessions had elapsed before application made, and that therefore, at the second sessions they had no jurisdiction, and this is entered in the acts of the sessions, the Court of K. B. refused to grant a *certiorari* to return the proceeding; for a *certiorari* only goes to fetch up the orders made at Sessions.

Case of *Mayo & Parsons*, Stra. 391.

32. The Court granted a *certiorari* to remove the proceedings after defendant had been found guilty below, though they said a writ of errror was most proper.

R. v. *Dixon*, Ld. Raym. 971. 1 Salk. 150. 3 Salk. 78.

33. A *certiorari* is no *supersedeas* to an execution begun before the *certiorari* issued.

R. v. *Nash*, 1 Salk. 147. Ld. Raym. 989.

34. A *certiorari* will not be allowed till bail is endorsed on the writ.

R. v. *Bothell*, 1 Salk. 149.

35. A return to a *certiorari* in English is good.

Anon. 1 Salk. 146.

36. In a *certiorari* to remove orders, the *fiat* must be issued by a judge, but in those to remove indictments, both the *fiat* and writ must be signed by the Judge.

R. v. *White*, 1 Salk. 150. 3 Salk. 80. S. C. by the name of *R.* v. *Whittle*.

37. If a defendant who has been convicted on an indictment in an inferior jurisdiction remove the record into the K. B. by *certiorari* between verdict and judgment, with a view of making objections to the indictment in arrest of judgment, that court will send the record back by *procedendo*, without going into the objections to the indictment.

R. v. *Jackson*, 6 T. R. 145.

38. If the defendant wish to take the opinion of the Court of K. B. on the sufficiency of such an indictment, he must remove the record there by writ of error after judgment below. 6 T. R. 145.

39. A *certiorari* cannot be served after the jury are sworn.

R. v. *North.* Salk 143.

40. The six days' notice required by that statute before any application for a *certiorari* to remove proceedings by justices of the peace must be given before making the motion for a rule to shew cause why such *certiorari* should not be granted.

R. v. *Just. of Glamorgansh.* 5. T. R. 279.

41. The provisions of the 13 G. 2. c. 18. do not apply to indictments at the sessions, but only to proceedings of a lower denomination: therefore a *certiorari* to remove an indictment from the sessions may be sued out without giving the six days' previous notice. The effect of such writ is to remove all proceedings of the nature described therein which have taken place between the teste and return, although the proceedings originated after the teste. The Magistrates below are bound to obey the writ after production of it, and notice to them in fact of such production when setting in their judicial capacity: and after that all further proceedings before them on the matter are erroneous.

R. v. *Battams,* 1 E. R. 298.

42. A *certiorari* to remove a conviction against one for removing *foreign* salt, will not remove one for removing salt generally, without saying foreign.

Anon. 1 Salk. 145. 3 Salk. 79.

43. The *certiorari* was for removing all convictions for having removed *foreign* salt, the order removed was for removing salt generally, and held that the order was not removed, and therefore the *certiorari* was quashed.

R. v. *Plint,* Ld. Raym. 820.

44. A *certiorari* to return an inquisition of *felo de se* and an inquisition *super captam* is returned, and upon the return it appeared to be taken after the teste of the writ, yet held well removed, for a *certiorari* will remove any order, &c. though made or taken after the teste if taken before the return.

Ld. Raym. 1305.

45. A *certiorari* to remove an indictment for a conspiracy being brought before judgment, and the Court of K. B. not being therefore apprised of the circumstance of the offence, would not form their judgment, and therefore a rule to quash the *certiorari,* so as to remit the indictment back to the sessions was made absolute.

R. v. *Nicholls,* Stra. 1227.

46. A *certiorari* to remove an indictment will not remove a conviction upon such indictment.

R. v. *Diron,* Ld. Raym. 971. 1 Salk. 150. 3 Salk. 98.

47. Upon such a *certiorari* a day must be given to the party for his appearance in court. *Ibid.*

48. Where the *certiorari* was to remove an indictment *de duobus equis felonice abductis,* and the indictment was *de uno equo furtive abducto; per cur.* there is nothing before the court, neither have they any warrant to proceed in this case, for there is a variance between the indictment and the writ.

Anon. 3 Salk. 80.

49. A *certiorari* to remove all proceedings against A. B. and C. will only remove indictments wherein they are *jointly indicted* not *separate indictments* against each.

R. v. *Brown & al.* 1 Ld. Raym. 609. 1 Salk. 146. 3 Salk. 79. S. C.

50. So where an order was made against A. and the *certiorari* was to remove all orders against A. and B. this shall not remove the order against A. alone, but it ought to be for all orders against A. and B. or either of them.

R. v. *Barnes,* (or *Baines,*) 2 Ld. Raym. 1199. Salk. 151. 2 Salk. 680. 1265.

51. A *certiorari* to remove all orders concerning the inhabitants of Needham Market, and *Needham* only is

returned without saying *market*, the orders are not removed, for the court cannot take notice that there is no such hamlet as Needham Market.

R. v. *Needham Market, (Inhab.)* 2 Salk. 452.

52. So a *certiorari* to remove a conviction of deer stealers, the Justices having returned two affidavits and a warrant to distrain, the return was quashed as imperfect.

R. v. *Leverman*, 1 Salk. 146.

53. On a *certiorari* to return an order it was returned *cujus quidem tenor sequitur in hæc verba*, and not *qui quidem ordo sequitur in hæc verba*, and it was quashed.

R. v. *St. Mary Devises*, 1 Salk. 147. 3 Salk. 80. S. C.

54. Orders of justices shall not be removed by *certiorari* before appeal, or the time of appeal expired, *Reg. Gen.* 1 Salk. 147.

55. Per Holt, C. J. It is an error in the clerks in London, that upon a *certiorari* they only return a transcript as if the record remained below; for in C. B. though they do not return the very individual record, yet the transcript is returned as if it were the record, and so it is in judgment of law.

R. v. *North*, 2 Salk. 565.

56. Under the stat. 5 W. & M. c. 11. s. 2, 3, requiring a defendant removing an indictment from the sessions by *certiorari* to find two sufficient manucaptors, who shall enter into a recognizance in 20*l.* conditioned to appear, plead, and try, &c. and that if the defendant be convicted, &c. the court shall give *reasonable* costs to be taxed, &c. and *that the said recognizance shall not be discharged till the costs so taxed shall be paid*, the amount of the costs to be taxed is not limited by such recognizance which is only a further security for them; and the Court will not discharge the recognizance till the taxed costs are paid to the prosecutor.

R. v. *Teal & al.* 13 E. R. 4.

CHALLENGING TO FIGHT.

1. If one were to kill another in a deliberate duel, under provocation of charges against his character and conduct, however grievous, it would be murder in him and his second; and therefore, the bare incitement to fight though under such provocations is in itself a very high misdemeanor, though no consequence ensue thereon against the peace.

R. v. *Rice*, 3 T. R. 581.

2. An endeavour to provoke another to commit the misdemeanor of sending a challenge to fight, is itself an indictable misdemeanor; particularly where such provocation was given by a writing containing libellous matter, and alleged in the prefatory part of the indictment to have been done with intent to do the party bodily harm and to break the king's peace: the sending such writing being an act done towards procuring the commission of the misdemeanor meant to be accomplished.

R. v. *Phillips*, 6 E. R. 464.

3. The Court of K. B. granted an information for sending a challenge, upon producing sufficiently verified *copies* of the letters wherein the challenge was contained.

R. v. *Chappel*, Burr. Rep. 402.

4. Where it appeared that the person applying for an information against another, for sending a challenge, had himself given the first challenge, the court refused to proceed against the other by way of information, but left the prosecutor to his ordinary remedy by action or indictment.

R. v. *J. C. Hankey, Esq.* 1 Burr. Rep. 316.

5. But, if each party had applied for an information, the court said it would have been right to have granted a cross information.

Ibid.

CHEATS.

I. *At Common Law.*
II. *By Statute.*
III. *Form of Indictment, &c.*

I. *At Common Law.*

1. A person who, under a mere false assertion that he wanted to purchase lottery tickets, bargains with the holder of them, and obtains the delivery of them by giving a draft on a banker (with whom he had not any cash,) for the amount of them, but which draft he falsely pretended to be a good one, and that he had money in his banker's hands and that the draft would be paid, is not indictable for a fraud at common law: for the banker's check drawn by the defendant himself left his credit exactly where it was before.
   R. v. *Lara*, Leach, 746, 6 T. R. 565.
2. In the above case, it was said by Lawrence J. that a mere false assertion unaccompanied by a *recommendation*, was not indictable.
   Leach, 746.
3. So upon an indictment at common law against another brewer, for that he, intending to deceive and defraud R. W. of his money, falsely fraudulently and deceitfully sold and delivered to him sixteen gallons of amber, for and as eighteen gallons of the same liquor, and received fifteen shillings as for the eighteen gallons knowing that there was only sixteen gallons, the court were clearly of opinion, that it was not an indictable offence, but only a civil injury.
   R. v. *Wheatley*, Leach, 818. Burr. Rep. 1125. Blackst. Rep. 273.
4. And in the above case, Lord Mansfield, C. J. said, "it amounts only to an unfair dealing and an imposition on this particular man, by which he could not have suffered but from his own carelessness in not measuring it; whereas fraud to be the object of criminal prosecution, must be of that kind which in its nature is calculated to defraud numbers, as false weights or measures, false tokens, or where there is a conspiracy.
   Leach, 818.
5. The same point has also been decided in *R.* v. *Dunnage*, Burr. Rep. 1131, which was an indictment against the defendant for selling three bushels and a half of oats as and for four bushels; and also in *R.* v. *Osborn*, Burr. Rep. 1697, which was an indictment for selling as and for two chaldron of coals, a quantity defective so many bushels.
6. An indictment against the defendant, for that he keeping a common grist mill and being employed to grind three bushels of wheat, did *vi et armis* take and detain forty two pounds of the wheat, was quashed upon demurrer, for there being no actual force laid, nor any charge of taking, as for an unreasonable toll, but being a private matter for which trover would lie.
   R. v. *Channel*, Stra. 793. East. P. C. 818.
7. When the defendant obtained goods from a tradesman by pretending that she was sent by her mistress who was his customer, held not to be indictable.
   R. v. *Bryan*, 2 Stra. 866. East. P. C. 819.
8. The knowingly exposing to sale and selling wrought gold under the sterling alloy, as and for gold of the true standard weight, (which would be indictable in goldsmiths under the statute,) was holden not to be indictable at common law in the case of a common person, the sale not being by any false weight or measure.
   R. v. *Bower*, East. P. C. 820. Cowp. 323.
9. An indictment for a cheat at common law charged the defendants M. and F. that they deceitfully and falsely intending to defraud T. C. of divers goods, *together* deceitfully bargained with him to barter and sell a quantity of pretended wine as true and good Portugal wine of said F. for a quantity of hats

of said T. C. and upon such bartering, &c. said F. pretended to be a merchant of London, and to trade as such in Portugal wines, when in fact, he was no such merchant, nor traded as such in wines; and said M. on such bartering, &c. pretended to be a broker of London, when in fact he was not; and that T. C. giving credit to the said fictitious assumptions, personating, and deceits, did barter, sell, and exchange to F. and did deliver to M. as the broker between T. C. and F., for the use of F., a quantity of hats, value, &c. for so many hogsheads of the pretended new Portugal wine; and that M. and F., on such bartering, &c. affirmed that it was true new Lisbon wine of Portugal, and was the wine of F., when in fact it was not Portugal wine, nor was it drinkable and wholesome, nor did it belong to F. And the indictment did not charge, that the defendants *conspired, eo nomine*, yet it charged that *they together*, &c. *did the acts* imputed to them; but it was thought to be a case of doubt and difficulty; ultimately, however judgment was given for the crown, and the true ground of that judgment was stated by Mr J. Dennison in *Wheatly's* case, namely, that it was a *conspiracy*.

R. v. *Macarly & Fordenbourg*, Lord Raym. 1179. East. 823, Salk. 286.

10. It is a crime in a receiver of taxes to pay the crown what he has received in specie by bills issued by the crown, to supply a deficiency of cash, and made current with such receiver, but not for that purpose.

R. v. *Knight* & *Burton*, 1 Lord Raym. 527, 1 Salk. 374.

11. See the objections taken to the form of the information for such offence.

Ibid. & 3 Salk. 186.

12. If a person paying such a bill to the receiver is to write his name thereon, it is criminal in the receiver to forge on such bill the name of any person, from whom he has received specie, for the purpose of paying the bill to the crown instead of such specie.

R. v. *Knight & Burton*, 1 Lord Raym. 527. 1 Salk. 374. 3 Salk. 186.

13. Persons appointed by the commissioners, though in an informal manner, collectors of the property tax under 43 G. 3. c. 122. cannot be convicted upon an indictment for a misdemeanor at common law charging them with the receit of duties from persons not chargeable thereto by *colour and pretence* of being collectors of duties under that act, though the money was fraudulently collected and misapplied, for they were in fact appointed collectors, and in such character they received the money.

R. v. *Dobson, & al.* 7 E. R. 218.

14. But they ought to have been indicted under s. 5. of the act.

Ibid.

15. And *Qu.* whether that section does not take away the common law remed by indictment. *Ibid.*

II. *By Statute.*

1. It is an offence within 30 G. 2. c. 24. to obtain money from the prosecutor under the false pretence that one of the prisoners had made a bet with a Colonel in the army, that another person would on the *next day* run on a certain road a certain distance within a certain time, and that two of the prisoners had each money on the bet.

R. v. *Young, Randall, Mullins, and Osmer*, Leach. 568. East. P. C. 828. 3 T. R. 98.

2. No *certiorari* lies on the part of the defendant to remove an indictment on 30 G. 2. c. 24. for it is expressly taken away by s. 20, which extends to all the offences mentioned in the act.

R. v. *Young & al.* 2 T. R. 472, and the court referred to *R.* v. *Smith*, Cowp. 24, as having previously settled the point.

3. The stat. 21 H. 8. c. 11. which restores goods to a prosecutor on conviction of the person who took them away, extends only to a

felonious, and not to a *fraudulent* taking, and therefore the court have no power to award restitution of goods obtained by false pretences.

R. v. *De Veaux & al.* Leach, 665.

III. *Indictment, Form of.*

1. The indictment charged that the defendant, a common carrier, received goods which he undertook to carry from one place, and to deliver them to a certain person at another place, but that intending to cheat the prosecutor he afterwards pretended to the prosecutor that he had so carried and delivered the said goods, and that the person to whom they were to be delivered had given him (the defendant) a receipt expressing such delivery of the goods, but that he the defendant had lost or mislaid the same or left it at home, and that defendant thereupon demanded of the prosecutor 16*s.* for the carriage of the said goods, by means of which false pretences he obtained the money; and held to be well laid.

R. v. *Airey*, East. P. C. 831.
2 E. R. 30.

2. And upon a writ of error brought after conviction, the judgment was affirmed; and the court said, it was not necessary in terms to alledge that the prisoner *falsely pretended*, &c. for it would have been sufficient to have averred by such and such pretences; alledging such pretences to be false.

2 E. R. 30.

3. Where the charge is for cheating by false tokens, it is necessary both at common law and upon the statute 33 H. 8. to set forth what the false tokens are.

East. P. C. 837, *R.* v. *Munez*, 2 Stra. 1127.

4. And so in an indictment upon 30 G. 2. it is equally necessary to describe what the false pretences were by which the fraud was effected.

R. v. *Mason*, Leach 548.
2 T. R. 581.

5. For in neither case is it enough to allege generally that the cheat was effected by means of certain false tokens or false pretences.

6. But it does not appear necessary to describe them more particularly than they were shewn or described to the party at the time.

East. P. C. 837-8.

7. Nor to make any express allegation that the facts set forth shew a false token or a false pretence, for where the indictment on 33 H. 8. charged that the defendant by a false *note* in the name of I. D. obtained into his hands a wedge of silver &c. it was holden well enough, though it was not said to be a false token.

R. v. *Terry*, East. P. C. 838.

7. If a false representation be made by one defendant in the presence of and in concert with others, with intent to defraud the prosecutor, it is a joint offence, and they may all be included jointly in the same indictment.

R. v. *Young, Randall, Mullins, & Osmer*, Leach. 568.
3 T. R. 98.

8. An indictment for a fraud at common law charging the false pretence to have been made to A. with intent to cheat and defraud B., whereby A. was deceived and B. cheated and defrauded, is bad.

R. v. *Lara*, Leach, 739.

10. An indictment for deceiving one Davila of several lottery tickets, *descriptis bonis et catallis* of Davila *decipiebant et defraudabant*, quashed for being too general.

R. v. *Powell*, Stra. 7.

11. The sessions have jurisdiction of cheats in general, and in *R.* v. *Brayne*, Mich. 12 G. 1. and *R.* v. *Reale*, East. 38 G. 3. the Court of B. R. gave judgment as for a cheat on indictments respectively removed from the sessions by *certiorari*.

1 E. R. 183.

12. An indictment upon the statute 30 G. 2. c. 24. for obtaining money by false pretences must negative by special averments the truth of the pretences: it is not enough to charge that the defendant *falsely pretended*, &c. (setting forth the

pretences) by means of which *said false pretences*, he obtained the money, &c. and for want of such negative averments, the court reversed the judgment.

R. v. *K. D. Perrott*, 2 Man. & Sel. 379.

CLERGY (BENEFIT OF.)

A prisoner, who is a second time convicted of felony and prays his clergy, but who has prayed and had his clergy once allowed him, may be debarred of it on the second conviction by means of a counterplea stating the fact.

R. v. *Scott & al.* Leach, 447,8. Same point *R.* v. *Dean*, Leach, 535,6.

CHOSE IN ACTION.

It is felony within the statute 2 G. 2. c. 25. s. 2. to steal *a single* bank note, for the words are, whoever shall steal any *notes*, &c. and then the act goes on to say, notwithstanding *any* of these particulars may be termed in law *a chose* in action.

R. v. *Hassell*, Leach, 1.

CLERK OF THE PEACE.

1. As to his appointment and the continuance of his office,

See *Saunders* v. *Owen*, 3 Salk. 250.

2. On the removal of a clerk of the peace, (according to 1 W. & M. c. 21.) the order of sessions for that purpose need not *set out* the *evidence*.

R. v. *Lloyd*, Stra. 996.

3. But such order must shew that a charge was exhibited against the clerk of the peace sufficient to warrant his removal.

R. v. *Baines*, Ld. Raym. 1265. 2 Salk. 660.

4. If a clerk of the peace in drawing an indictment, introduce unnecessary recitals, which uselessly lengthen the indictment, the court will order him to repay the expense thereby incurred.

R. v. *May*, 1 Dougl. 193.

COIN.

I. *Offences relating to the Coin.*
II. *Indictment, Evidence, and Attaint.*

1. *Offences relating to the Coin.*

1. *Quære*, whether the having possession of one counterfeit half crown, two counterfeit shillings, and twelve counterfeit six-pences made of base metal to the likeness of such money, knowing the same to be counterfeit money, with intention to pay away the same as true and lawful money, is an indictable offence at common law, no notice being taken of any such case in 15 G. 2. c. 28.

R. v. *Parker*, Leach, 49.

2. In the above case, tried before Mr. J. Dennison at Kent summer assizes 1750, judgment was respited and the question reserved, but it does not appear that any opinion was ever given and the prisoner was after some lapse of time discharged upon entering into recognizance to appear at the then next assizes for Kent. *Ibid.*

3. To counterfeit the impression of the gold coin on a piece of gold not round, and which would not pass in circulation, is not high treason, for the piece of gold is not made to the *similitude* of the legal current coin, and therefore the crime is incomplete.

R. v. *Varley*, Leach, 89. East. P. C. 164. Bl. Rep. 682.

4. So where it appeared that a counterfeit guinea the impression both on the head side and on the reverse of which were perfect and complete, had been delivered to a person to get changed, but that from some awkward roughness upon the edges of it, no one would take; it was held by all the Judges that the treason was not quite completed.

Cited in *Wooldridge's* case, Leach, 346.

5. Extracting latent silver from the body to the surface of base metal by means of *aqua fortis*, so as to make the metal resemble silver coin, is a colouring of base metal within the

words "materials producing the colour of silver."

R. v. *Lavey & Parker*, Leach, 182. East. P. C. 166.

6. And so preparing blank pieces of base metal of such materials, as when steeped in *aqua fortis* and rubbed will make them resemble good shillings, is a *colouring* within the statute before the resemblance has been completed by such friction.

R. v. Case, Leach, 165.

7. On the inquiry of the last case, the counsel for the crown contended that the offence was complete by dipping the round blank in the *aqua fortis*, by which some change of colour had been produced, for that the words "producing the colour of silver" were to be restrained to the next antecedent words "materials," &c. and not to the preceding words "colour," &c. but one of the Judges said, he understood the words "colour," &c. to mean producing on the piece of metal the colour of silver, which was not done here, for without *rubbing* the money coined could not pass; and another of the Judges observed that the word in the statute was "producing" in the present tense, and not materials *which would produce;* but all the other Judges thought the conviction right; they considered that the offence was complete when the piece was coloured, for it was then coloured with materials which produce the colour of silver, and that it was not necessary that the piece so coloured should be current, for the colouring of *blanks* was an offence within the clause.

East. P. C. 165, 6.

8. The prisoner was indicted under the stat of W. 3. for that he knowingly and traitorously had in his custody and possession one *puncheon* made of iron and steel in and upon which was made and impressed the figure, resemblance, and similitude of the head side of a *shilling:* the third count was the same as the first, only substituting the word *guinea* for shilling: the second and fourth counts respectively charged that the said puncheon *would impress and make* the figure, resemblance, and similitude of the head side of a shilling and guinea; in support of this indictment the following evidence was given by the engraver of the mint: that the puncheons found in the prisoner's custody were complete and hardened ready for use, but that it was impossible to say, that the shillings found were actually made with those puncheons; that the impressions were too faint to be exactly compared, but that they had the appearance of having been made with the puncheons, that the manner of making these puncheons was as follows: a true shilling was cut away to the outline of the head, which outline was fixed on a piece of metal, and was filed or cut close to the outline: this was the puncheon, and the puncheon made the die which was the counter puncheon; that a puncheon is complete without letters, but that it may be made with letters upon it, though from the difficulty and inconvenience, it was never so made at the mint: but that after the die was struck, the letters were engraved on it; that a puncheon alone without the counter puncheon would not make the figure, but to make an old shilling or a base shilling current, nothing more is necessary than these instruments; that they may be used for other purposes, such as making seals, buttons, medals, or other things where such impressions are wanted. Upon this case being referred to the Judges, they were unanimously of opinion, that this was a puncheon within the meaning of the act.

R. v. *Ridglay*, Leach. 225. East. P. C. 171.

9. The indictment (which was for a misdemeanor at common law,) charged, that the defendant without any lawful authority had in his custody and possession, two iron stamps, each of which would make and impress the figure, resemblance, and similitude of one of the sceptres im-

pressed upon the current gold coin of this realm called half-guineas, with intent to make the impression of sceptres on divers pieces of silver coin of this realm called sixpences, and to colour such pieces of the colour of gold, and fraudulently to utter them to his majesty's subjects as lawful half-guineas. Page, Probyn, and Lee, Justices, held that the bare having such instrument in possession with the intent charged was a misdemeanor, but Lord Hardwicke thought, that the bare possession was not unlawful unless made use of, or unless made criminal by statute, as in the instance of stat. 8, 9 W. 3.

R. v. *Sutton*, East. P. C. 172. Stra. 1074.

II. *Indictment, Evidence, and Attaint.*

1. An indictment on 8 & 9. W. 3. c. 26. s. 6. for putting off counterfeit money, must state that it was "not cut in pieces," for these words are a material part of the description of the offence.

R. v. *Palmer*, Leach, 121.

2. An indictment on 15. G. 2. c. 28. s. 2. for uttering counterfeit money by the common trick called *ringing the changes* is good, although it do not state that it was *uttered in payment as and for good money*, for the words of the statute are in the disjunctive "utter" or "tender in payment."

R. v. *Franks*, Leach, 736.

3. The charge in an indictment on 15 G. 2. c. 28. s. 3. for uttering false money *twice* or oftener within *ten days*, must to warrant the year's imprisonment inflicted by that section of the act be contained *in one count*.

R. v. *Tandy*, Leach, 970. East. P. C. 182. S. P. *R.* v. *Smith*, Leach, 999.

4. But where such offence is made a substantive charge of and contained in two several counts, the court may give judgment of six months imprisonment as for the lesser offence.

R. v. *Tandy*, Leach, 970.

5. An indictment on the third section of 15 G. 2. c. 28. for uttering counterfeit money having at the same time other counterfeit money in custody is good, although it do not alledge the offender to be a *common utterer of false money*.

R. v. *Smith*, Leach, 1001. East. P. C. 183. S. C. & S. P. 2 B. & P. 127.

6. A person may be indicted on 8 & 9 W. 3. c. 26. for having in his custody *a mould* on which is made and impressed the similitude of one of the sides of a shilling, though the latter part of the first section of the act omits the word *mould* which is in the former part of that section, (as to making or mending,) but says *or other tool or instrument before mentioned*, for the word mould is comprised in these general words; and in such an indictment it need not be averred to be a tool or instrument.

R. v. *Lennard*, Leach, 105. East. P. C. 170. Bl. Rep. 807, 822.

7. A mould which has the concave form and figures of a shilling and the head or profile being turned the contrary way, and all the letters of the inscription reversed, will support an indictment calling it an instrument *on* which the *resemblance* of a shilling *was made and impressed*, because the stamp of the current coin were certainly impressed on the mould in order to form the cavities thereof, but the judges thought the indictment would have been more accurate had it charged that the prisoner "had in his custody a mould that *would make and impress* the similitude, &c."

R. v. *Lennard*, Leach, 107. East. P. C. 170. Bl. Rep. 822.

8. A count on 25 Ed. 3. c. 2. for coining a shilling, and another on 8 & 9 W. 3. c. 26. s. 4. for counterfeiting to the likeness and similitude of the current coin, cannot be joined in the same indictment.

R. v. *Harris & Minion*, Leach, 171.

9. On an indictment for high treason on 25 Ed. 3. c. 2. and 8 & 9 W. 3. c. 26. s. 4. for coining to the similitude of the legal money, it seems

to be necessary that the counterfeits should be in a state fit for circulation.

R. v. *Harris & Minion*, Leach, 162.

10. Where upon an indictment on stat. Will. 3. for feloniously *putting off* counterfeit money, it appeared in evidence that the prisoner had carried a large quantity of counterfeit milled money of the likeness and similitude of shillings, to the house of a Mrs. Levy, which she agreed to *take and receive* from him, and which he agreed to *pay and put off* to her at the rate of twenty-nine shillings for every guinea; that in performance of this bargain the prisoner laid a heap of counterfeit shillings on a table, and that Mrs. L. proceeded to count them out at the rate before mentioned; that she had counted out three parcels containing eighty-seven counterfeit shillings, for which she was to pay the prisoner three guineas, but that before she had paid him and while the counterfeit money laid there exposed upon the table, the officers of justice entered the room and apprehended them: and Mrs. L. being admitted a witness for the crown, swore that she had bought the three parcels of shillings, and was going to pay the prisoner three guineas for them at the moment they were detected. This was held not to be a sufficient *putting off* to bring the offence within the intent of the statute; for the common meaning of the expression *put off* is that the party has *got rid of it*.

R. v. *Wooldridge*, Leach, 344. East. 179.

11. To make a round blank, like the smooth shillings in circulation, the original impression on which has been effaced by wear, is counterfeiting to the likeness and similitude of the good legal and current coin of the realm called a shilling.

R. v. *Wilson*, Leach, 320.

12. And therefore a counterfeit shilling produced in evidence, although it is quite smooth and there is no impression of any sort discernible on it, will support an indictment for counterfeiting to the *similitude* of the *legal and current money and silver coin of this realm*.

R. v. *Welsh*, Leach, 403. East. P. C. 164.

13. And in *Welsh*'s case the Judges said it was a question of fact whether the counterfeit was of the likeness and similitude of the lawful current silver coin called a shilling, and the jury having so found it, the want of an impression was immaterial, because from the impression being generally worn out or defaced it was notorious that the currency of the genuine coin of that description was not thereby affected: that the counterfeit was perfect therefore for circulation and probably might deceive the more readily from having no appearance of an impression, and that the offence consisted in the deception.

Leach, 403. East. P. C. 164.

14. An indictment (under s. 6. of the statute 8 & 9 W. 3) for putting off counterfeit *milled* money is sufficiently supported by evidence, that the prisoner put off counterfeit money, though such money was not marked on the edge: for *milled* money has no reference whatever to the *edging* which is put on real and counterfeit coin, and the operation of *milling* is a distinct and different operation from *edging*, for it is milled money before it is edged money, and those marks on the edges of lawful coin are not necessary to constitute that description of coin which is called *milled* money.

R. v. *Runnings & al.* Leach, 708. reported in East. P. C. 180 by the name of *R.* v. *Bunning alias Pendegast*.

15. The like was decided in the case of *Hannah Dorington*, and also in that of *Jacobs* and *Lazarus*, which were precisely similar and were considered by the Judges at the same time.

Leach, 709. East P. C. 181.

16. *Milled* money is so called to distinguish it from *hammered* money and all the money now current is milled, *i. e.* passed through a mill

or press, to make the plate out of which it is cut of a proper thickness; though by a vulgar error it is supposed to mean the marking on the edges which is properly termed graining. East. P. C. 181.

17. A person attainted of treason on 8 & 9 W. 3. c. 26. for counterfeiting the coin shall forfeit his lands, though the corruption of blood is saved by that act.

Sir S. Lovell's case, 1 Salk. 85.

18. For in the case of an attainder of felony the forfeiture of the estate to the lord is only by way of escheat, and the not descending is the consequence and effect of the corruption of blood or incapacity, but in treason the lands come to the Crown as an immediate forfeiture and not as an escheat: and the forfeiture and corruption of blood are distinct parts of the penalty so that the forfeiture may be saved and yet the corruption remain, or the corruption be saved and the forfeiture remain, and accordingly it is so provided by several statutes. *Ibid.*

COMMITMENT.

1. A commitment must contain convenient certainty, but it is not necessary to alledge that the charge was made upon oath, for a commitment may be *super visum* and then an oath is unnecessary. Leach, 200.

2. A commitment expressed only to be for *treasonable practices* is too uncertain, and the prisoner will be bailed.

R. v. *Sayer*, Leach, 193 (cited) in 2 Bl. Rep. 1165.

3. In a warrant of commitment for high treason beyond the sea, it is not necessary specifically to alledge that the place where it was committed was *without the realm of England*, if it sufficiently appear by the place named that such place is out of the kingdom, as at "Savannah in the colony of Georgia in North America."

R. v. *Platt*, Leach, 200.

4. It is no objection to a commitment for treason that the prisoner is thereby ordered to be kept *safe* and *close*.

R. v. *Wyndham*, Stra. 2.

5. If a commitment for treason be made by a Secretary of State, it need not appear to have been on oath. *Ibid.*

6. Such a commitment generally for high treason is sufficient, and the *overt* act need not be expressed in the commitment. *Ibid.*

7. The Court of K. B. cannot discharge a person committed upon a warrant from the Speaker of the House of Commons for a breach of privilege.

R. v. *Paty & al.* Ld. Raym. 1105. 2 Salk. 503.

8. Though the party was not a member of the House and the breach of privilege was committed out of the House, and tho' that breach appears by the warrant to have been merely bringing an action against the consable at an election, for not allowing defendant's vote. *Ibid.*

9. The Speaker's warrant need not be sealed (because the House is a court,) and may direct that defendants shall remain in custody until they shall be discharged by due course of law. *Ibid.*

10. If a commitment in execution by a court of oyer and terminer be wrong in form only, the Court of of K. B. will not discharge the defendant on a *hab. corp.* but will put him to his writ of error.

R. v. *Bethell*, 1 Salk. 348. 1 Ld. Raym. 47.

11. Such a commitment ought in strictness to be to the sheriff, but if it be to the gaoler it is good, for a gaoler is a known officer in law and his custody is the custody of the sheriff to many purposes.

R. v. *Bethell*, 1 Salk. 348.

12. When a person is committed in execution, it ought to be to the immediate officer of the court (as the sheriff) or it is bad.

R. v. *Bethell*, 1 Ld. Raym. 47.

13. And the party who is to be com-

mitted ought to be present in court, otherwise the want of a *capias* is not supplied. *Ibid.*

14. Justices of the Peace in England, may commit a person to gaol in England for an offence against the Irish laws committed in Ireland, in order to his being sent over and tried there.

R. v. *Kimberley*, Stra. 848.

15. Where there is a commitment by warrant the officer must to an *habeas corpus* return it in *hæc verba*, for otherwise it would be in the power of a gaoler to alter a prisoner's case and make it either better or worse than it is upon the warrant.

R. v. *Clerk*, 1 Salk. 348.

16. Where there appeared to be a custom for the mayor &c. to commit to the sheriff, and the return to an *hab. corp.* was that he was committed *custodiæ mea* without saying he was sheriff, the Court held the return ill and discharged the party.

R. v. *Clerk*, 3 Salk. 92. 1 Salk. 348.

17. Where a commitment is in court to a proper officer there present there is no warrant of commitment, and therefore upon an *habeas corpus* brought the officer must return the truth of the whole matter.

R. v. *Clerk*, 1 Salk. 349.

18. A person who had been committed by the Vice Chancellor of Oxford for carrying goods between Oxford and London without a university license, there to remain until he gave security to carry no more and to observe the statutes of the University for life was discharged upon an *habeas* brought, the Court declaring it to be an illegal commitment.

R. v. *Barnes*, Stra. 917.

19. The Court discharged a person committed by the Commissioners of Bankrupts, "until he conformed himself to their authority," because the Commissioners had other authorities besides that of examining and it did not appear but it might require a submission to them in other respects, and for that all powers given in restraint of liberty must be strictly pursued and in this case the commissioners had but a special authority and must not exceed it.

R. v. *Bray*, 1 Salk. 348. Ld. Raym. 99.

20. So a commitment by such commissioners (for refusing to be examined) *till discharged by due course of law* is bad: for it should have been till he submitted himself to be examined.

Hollingshead's case, 2 Ld. Raym. 851. 1 Salk. 351.

21. A commitment under stat. 9 G. 2. c. 35 s. 18, 19. till discharged by due course of law is bad; it should have been *till he gives a satisfactory account of himself* and pursuing the words of the statute.

Stephen Mash's case, Bl. Rep. 805.

22. And the true distinction is where a man is committed for any crime either at common law or created by stat. for which he is punishable by indictment, there he is to be committed *till discharged by due course of law*, but when it is in pursuance of a special authority the terms of the commitment must be special and exactly pursue that authority.

Ibid.

23. And therefore a commitment on 35 Eliz. c. 2. (for refusing to be examined and answer whether Jesuit or not,) *until delivered by due course of law* was held to be bad, because the statute was not pursued.

Yorley's case, 1 Salk. 351.

24. Where a person is tried by the censors of the College of Physicians for ill practice, and thereupon committed *until he should be delivered by the said college or due course of law*, it is ill, for the commitment ought to be certain that the party may know for what he suffers and how he may regain his liberty; for if he was committed for the fine it ought to be till he pay the fine, but if the intent was to punish him not only by fine but by imprisonment, the censors ought to have made them two distinct parts of the judg-

ment by condemning him to prison so long, and from thence also until he should pay the fine.

R. v. *Dr. Groenvelt*, 1 Ld. Raym. 213.

25. A commitment under 27 H. 8. c. 20. for a contempt in a suit in the Spiritual Court for dues, must specify the kind of dues for which the party was sued, that it may appear that it was an ecclesiastical duty for which the party was imprisoned.

R. v. *Sanchee*, 1 Ld. Raym. 323.

26. A commitment under 19 G. 2. c. 34. s. 1. for rescuing smuggled goods, need not state that the prisoner was armed; "that he with others armed, &c." is sufficient, for though he was not armed himself yet if he was active with others who were, it is within the act.

R. v. *Franklyn*, Leach, 290.

27. If a statute (3 W. & M. c. 10. s. 2.) directs that a person convicted before a justice of the peace shall for want of a sufficient distress for a penalty incurred by him on conviction suffer imprisonment, it is not sufficient in the warrant of commitment to state that defendant was convicted and not paying the penalty the justice issued his warrant to the constable to levy the amount by distress of defendant's goods; *and that said constable returned that defendant had* no goods, for the statute does not say that upon *the return of the warrant* that he has no goods he shall suffer imprisonment, but *that for want of distress* he shall, &c.

R. v. *Chandler*, 1 Ld. Raym. 545.

28. A justice of the peace may commit a feme covert who is material witness upon a charge of felony brought before him, and who refuses to appear to give evidence against the prisoner upon the trial, or to find securities for her appearance there.

Bennet & Ux. v. *Watson & al.* 3 Mau. & Sel. Rep. 1.

CONSPIRACY.

1. The conspiracy is the gist of the offence and though nothing is done in prosecution of it it is a complete and consummate offence of itself: and whether the conspiracy be to charge a temporal or ecclesiastical offence on an innocent person it is the same thing.

R. v. *Best & al.* Ld. Raym. 1167. 1 Salk. 174. And see *R.* v. *Kinnersley and Moore*, Stra. 193.

2. Whether it be to charge a man with a criminal act or such as only may affect his reputation.

R. v. *Rispal*, 3 Burr. Rep. 1320. 1 Bl. Rep. 368.

3. A conspiracy consists in the *unlawful* conspiracy to injure a person by a *false* charge.

R. v. *Rispal*, 3 Burr. Rep. 1320.

4. Several persons may lawfully meet together and consult to prosecute a a guilty person; otherwise if it be to charge one that is innocent right or wrong for that is indictable.

R. v. *Best & al.* 1 Salk. 174.

5. In conspiracies there is no occasion to prove the actual fact of conspiracy but it may be collected from all the collateral circumstances of the case.

R. v. *Parsons* & *al.* 1 Bl. Rep. 392.

6. Where upon an indictment for a conspiracy against the husband his wife and servants, the evidence was that they had at several times given money to the prosecutor's apprentice to put grease into the paste, which had spoiled the cards, but there was no account given that ever more than one at a time was present though it was proved they had all given money in their turns; it was objected that this could not be a conspiracy for two men might do the same thing without having any previous communication with one another. But the Chief Justice ruled that the defendants being all of a family and concerned in making of cards it would amount to evidence

of a conspiracy and directed the jury accordingly.

R. v. *Cope* & *al.* Stra. 144.

7. In an indictment for a conspiracy the venue must be laid where the conspiracy was, not where the result of such conspiracy was put in execution.

R. v. *Best* & *al.* 1 Salk. 174.

8. Where an indictment for a conspiracy was laid in *Middlesex*, where acts done by some of the conspirators were proved, acts done by others of the conspirators in other counties were given in evidence against them.

R. v. *Bowes and others*, in 1787, cited 4 E. R. 171.

9. It is an indictable offence to conspire to charge a person with being the father of a bastard child with which a woman then went big; and in such an indictment it need not be averred that the prosecutor was not the father, especially if the words of the indictment be, did *falsely* conspire *falsely* to charge &c. and innocence is to be intended till the contrary appears.

R. v. *Best and al.* 1. Salk. 174.

10. So it need never be averred in the indictment that the prosecutor was innocent of the crime imputed to him by the conspirators.

R. v. *Kinnersley and Moore*, Stra. 193.

11. An indictment for a conspiracy is good although it is not alledged *in the charge itself* that the defendants conspired *falsely* to indict the prosecutor, and although it does not appear of what *particular crime or offence* they conspired to indict him, but only in *general* that the defendants did wickedly, and maliciously conspire to indict and prosecute the prosecutor for a crime or offence liable to be capitally punished by the laws of this kingdom; and per Lord Mansfield, here is an overt act laid as I may call it, and it is found, that the defendants ACCORDING to *the conspiracy, &c. between them before had, actually* DID *falsely* wickedly and maliciously, and without any reasonable or probable cause *indict* this man, and the very indictment itself is particularly specified in the present one, so that this was a *complete* formed conspiracy actually carried into execution.

R. v. *Spragg and his daughter*, 2 Burr. 993.

12. If a man and woman marry, the man assuming the name of another, and the woman marrying him by such false name knowing it to be false, with a design thereby to do a future injury to the person whose name was assumed, it is a conspiracy,

R. v. *George Taylor and Mary Robinson*, Leach, 44.

13. And in such a case though no actual injury be proved yet it is the province of the jury to collect from all the circumstances of the case whether there was not an intention to do a future injury to the person whose name was assumed. *Ibid.*

14. If one only of two persons indicted for a conspiracy appear and take his trial, he may nevertheless be found guilty of the conspiracy in the absence of and before the other defendant has pleaded.

R. v. *Kinnersley and Moore*, Stra. 193.

15. One being indicted for a conspiracy with another who died before the indictment preferred, the survivor was found guilty and received judgment notwithstanding, and the Court referred to *R.* v. *Kinnersley & Moore* as in point.

R. v. *Nicholls*, Stra. 1227.

16. After a conviction of a conspiracy the defendants must be present in court, when a motion is made on their behalf in arrest of judgment.

R. v. *Spragg and his daughter*, 2 Burr. Rep. 929. 1 Bl. Rep. 209.

17. So upon a motion for a new trial after conviction for a conspiracy, all the defendants must be present in court.

R. v. *Teal & al.* 11 E. R. 307. *R.* v. *Askew*, 3 Mau. & Sel. Rep. 2 *R.* v. *Cochrane*, (Lord) *Ibid.*

18. But upon an indictment being removed into the K. B. by *certio-*

vari and set down for argument, it is not necessary that the defendant should appear in court upon the argument, it being in the nature of a special verdict.

R. v. *Nicholls*, Stra. 1227.

19. The defendants were convicted on an information for a conspiracy to take away the character of one Kempe and accuse him of murder by pretended conversations and communicatives with a ghost that answered by knocking and scratching in Cock Lane, &c. and received the following judgment: Richard Parsons (the father of the child, who was the principal agent in the pretended communication,) to stand thrice in the pillory and be imprisoned two years; Eliz. Parsons the mother to be imprisoned one year; Mary Frazer a servant who was aiding and assisting, was sent to the house of correcting to hard labour for six months; Moore the curate of the parish and one James were discharged on paying the prosecutor £300 and his costs which were nearly as much more: Brown who had published a narrative and one Day the Printer of a newspaper had previously made their peace with the prosecutor.

R. v. *Parsons & al.* Bl. Rep. 401.

20. The quarter sessions have jurisdictions over conspiracies.

R. v. *Rispal*, 3 Burr. Rep. 1320. 1 Bl. Rep. 368.

21. An indictment will not lie for conspiracy to commit a civil trespass upon property, by several persons agreeing to go and by going into a preserve for game the property of another, for the purpose of snaring hares; though alledged to be done in the night by the defendants armed with offensive weapons for the purpose of opposing resistance to any endeavours to apprehend or obstruct them.

R. v. *Turner & al.* 13 E. R. 228.

CONSTABLE.

1. By the common law all constables are chosen at the leet, and where there is no leet at the tourn.

R. v. *Bernard*, 1 Ld. Raym. 94. 2 Salk. 52.

2. A corporation therefore has no power at common law to elect a constable, it can only be by *prescription*. *Ibid.*

3. A constable chosen at a court leet may be sworn in before one justice of the peace.

R. v. *Franchard*, (Dr.) Stra. 1149.

4. A constable of a manor including a parish but more extensive, is not by virtue of a certificate under 10 W. 3. c. 23. exempt from serving the office of constable of such manor.

R. v. *Darbishire*, Burr. Rep. 1183.

5. The act of W. 3. did not intend such certificate to be a discharge from an office whereof the functions are to be exercised out of the limits of the parish. *Ibid.*

6. A foreigner naturalized by a private act of parliament is not liable to serve the office of constable; nay he is *not competent*, for the stat. 1. G. 1. c. 4. (amending 12 & 13 W. 3. c. 2.) enacts, that thereafter no person shall be naturalized unless there be words inserted to declare that such person shall not take *any office or place of trust* either civil or military, and the office of constable is clearly a civil office of trust.

R. v. *F. de Mierre*, Burr. Rep. 2788.

7. A person who is a resiant within a leet which is within a hundred, is not thereby exempt from serving the office of constable of the hundred, and a custom to elect such a one constable is good.

R. v. *Genge*, 1 Cowp. 13.

8. The college barber to Brazennose College Oxford though he resides in the city out of the college, is exempt from serving the office of constable in the city.

R. v. *Routledge*, Dougl. 530.

9. A constable *may* execute a warrant

of a justice of the peace out of his *liberty*, but he is not *compellable* so to do.

— v. *Norman*, 1 Ld. Raym. 736.

10. For under a magistrate's warrant for levying a poor's rate directed to the constables of the parish of A they may seize goods in the parish of B.

Hampton v. *Lammas*, 1 Ld. Raym. 735. See *R.* v. *Chandler*, this title No. 11.

11. If a statute directs a thing to be done by a constable that will give them jurisdiction over the limits of their parishes. So if a justice of the peace directs his warrant to a particular constable, he may execute it out of his parish any where within the jurisdiction of the justice.

R. v. *Chandler*, 1 Ld. Raym. 545.

12. Where a warrant is directed generally to all constables, &c. it shall be taken respectively to each of them within their several districts and not to the constable of one parish to take a distress in another parish, for where a precept or warrant is directed to men by name of their office, it is confined to the districts in which they are officers. *Ibid.*

13. The high constable as well as the petit constable were officers at common law before the stat. of Westm. and they are the proper officers to the justices of the peace, as the sheriff is to the Court of K. B. for as they were subordinate officers to the conservators of the peace, so they are to the justices.

R. v. *Wyatt*, 1 Ld. Raym. 1189. 1 Salk. 280.

14. And therefore he is indictable for neglecting a duty required by common law or a statute. *Ibid.*

15. In this case he was indicted for not having made any return or certificate to a warrant directed to him to levy a penalty. *Ibid.*

16. And such an indictment need not conclude against the form of the statute though the constable be named therein. *Ibid.*

17. The warrant itself need not be returned by the constable, for it may be necessary to keep it for his own defence: but if he detains it he must certify what he has done. *Ibid.*

18. A statute authorising the dean, steward or burgesses of A. to hear and punish incontingencies according to the custom of a place in which the constable of a parish may act throughout the whole, does not authorize a constable of a part of A. to act without a warrant from the dean &c. of A. out of that parish.

R. v. *Tooley & al.* Ld. Raym. 1296.

CONTEMPT.

1. For a contempt in speaking of the Court when a rule was served on defendant, the Court issued an attachment against him without a rule to shew cause.

Anon. Salk. 84.

2. A captain of a man of war was fined 10*l.* for destroying a writ of *habeas corpus* for delivering an impressed sailor and impressing some of the boats crew which brought the writ.

R. v. *Falkenham*, (Captain) Bl. Rep. 269

3. It is a gross contempt of the Court for the sheriff to deliver to an infant a writ of appeal sued out in the infant's name, for the supposed murder of a relation of the infant's.

R. v. *Toler*, 1 Ld. Raym, 555. 1 Salk. 176.

4. It is a great contempt to refuse to be sworn to give evidence to the grand jury, and it seems that the Quarter Sessions have power to fine for such a contempt and commit the parties till the fine be paid.

R. v. *Preston*, (Ld.) 1 Salk. 278.

5. On an attachment for a contempt the defendants cannot confess the contempt till the interrogatories are filed, for till that time there is no charge and the attachment is only the mesne process to bring in the party.

R. v. *Edwards & Symons*, B. Rep. 637.

6. A defendant in contempt had his recognizance discharged without a

fine, the Court of K. B. taking into their consideration the heavy costs he had incurred and paid by prosecuting the proceedings which had brought him into contempt.

R. v. *Wheeler*, Burr. Rep. 1257.

7. The master's report upon interrogatories of contempt, cannot be moved for the last day of the term without previous leave of the Court, unless in extraordinary cases and on personal service of notice.

R. v. *Wheeler*, Bl. Rep. 311.

8. At a court the steward told W. R. he was a *resiant*, who replied *he lied*: thereupon the steward fined him 20*l.* and adjudged good without a prescription so to do, and debt lies for the fine. 3 Salk. 33.

N. B. But if the steward fine the jury for contempt, he must fine them *severally*, for the contempt of one is not the contempt of the other.

Ibid.

CONVICTION.

1. A defendant who has been summoned may on wilful default of appearance be convicted of the offence, for if it were otherwise every criminal might avoid conviction.

R. v. *Simpson*, Stra. 44.

2. And it is the constant practice of the Court of K. B. in granting attachments &c. to give notice to the party to come and make his defence, and on his default the Court proceeds against him. *Ibid.*

3. But if a defendant appears and answers to the information, it cures the defect of his not being summoned.

R. v. *Atkins*, Burr. Rep. 1786.

4. Regularly before a Magistrate proceeds to hear and determine a case there should be an information in writing exhibited against the defendant for the offence, and this information must be supported by the evidence.

R. v. *Fuller*, 1 Ld. Raym. 509.

5. But though a conviction upon information *instanter* is good, yet it ought then to be declared to be made so and not grounded upon an information which is not proved.

Ibid.

6. And the evidence must not be of a fact *subsequent* to the information.

Ibid.

7. A person convicted by a justice cannot when the conviction is returned into B. R. by *certiorari* plead specially thereto, suggesting a right to do the fact for which he was convicted.

R. v. *Burnaby*, Ld. Raym. 900, (*or Barnaby*,) 1 Salk. 181.

8. But upon putting in a suggestion of a matter of right while a conviction remains below, the Court of K. B. will grant a prohibition after conviction to stay the justices from proceeding on it; for if a defendant has but a colour of title justices of peace have no jurisdiction.

Ld. Raym. 900. 1 Salk. 181.

9. A person who is titled *gentleman* in a conviction may be convicted under a statute importing to be made to prevent certain misdemeanors by *lewd* and *mean* people.

R. v. *Burnaby*, or *Barnaby*, Ld. Raym. 900. 1 Salk. 181.

10. A justice is *bound* to give a defendant convicted by him a copy of such conviction *on being thereto requested.*

R. v. *Midlum*, Burr. Rep. 1720.

CORONER.

I. *His Office and Duty.*
II. *Of the Evidence and Inquisition, and of setting aside the Inquisition.*
III. *As to Deodands.*
IV. *Coroner how punishable for Misconduct.*

I. *His Office and Duty.*

1. A coroner's office does not determine by the death of the king.

3. Salk. 100.

2. A coroner is not bound *ex officio* to take an inquisition, but must be sent for.

R. v. *Clerk*, 1 Salk. 377.

3. The land coroner has jurisdiction to take an inquisition on board a ship of war lying within the harbour of Portsmouth, on view of the body

of a sailor who had hanged himself on board such vessel.
R. v. *Solgard*, Stra. 1037.

4. And in the above case the Court granted an information against the captain of the vessel, for refusing to let the coroner and his jury come aboard and take the inquisition. *Ibid.*

5. The admiralty coroner has only a concurrent jurisidiction with the land coroner. *Ibid.*

6. The coroner cannot take an inquisition but upon view of the body, therefore where one drowns himself and the body cannot be found, the inquisition must be taken by commissioners, or by justices of the peace; or justices of assize may make inquisition without a commission, and such inquisitions are traversable though an inquisition taken before a coroner is not, as hath been sometimes held; but anciently it was traversable in all cases, but when it was *fugam fecit*, and so it is now.
3 Salk. 100, 101.

7. Therefore where a coroner's inquest found W. R. *felo de se* his executors were admitted to traverse it.
3 Salk. 100, 101.

8. The Court of K. B. upon motion, granted leave to the coroner to take up a body and take a new inquisition. *R.* v. *Saunders*, Stra. 167.

9. And it was said that the coroner could not do this without the leave of the Court. *Ibid.*

9. After a coroner and his jury have viewed a body and given a verdict thereon, if the inquisition is quashed the coroner may if the body has afterwards been buried order it to be taken up, and may take a second inquisition upon view of it, but this must be done upon a fresh pursuit, and not at a great distance of time (as seven months.)
R. v. *Clerk*, 1 Salk. 377.

10. If a coroner's inquest be quashed, he must take a new one *super visum corporis*, but if a *melius inquirendum* be granted on a *male se gessit* of the coroner, the new inquiry must be before the sheriff or commissioners not *super visum corporis*, but upon affidavits; but where an inquisition is quashed, it is as if none had been taken.
R. v. *Bunney*, 1 Salk. 189.

II. *Of the Evidence and Inquisition, and of setting aside the Inquisition.*

1. The coroner must write down the effect of the evidence given, and certify it to the justices of gaol delivery and bind over the witnesses to appear. 3 Salk. 100, 101.

2. Upon an indictment and trial for murder, the depositions taken before the coroner may be given in evidence if the witnesses are dead.
8 Salk. 100. 101.

3. A coroner's inquisition must shew upon the face of it, for what place the party who took it is coroner, and that it was taken by the oath of "honest and lawful men."
Ld. Raym. 1305.

4. The Court quashed an inquisition *felo de se*, because the nature of the wound was not set forth and that it was mortal and that the party died of it, for that is the very end and reason that the jury have the view.
R. v. *Clerk*, 1 Salk. 377.

Such an inquisition is good without the word *mundravit*. *Ibid.*

5. A coroner's inquest *sup. vis. corp.* found that W. R. *felonice seipsum rivum misit et* in *rivo predicto seipsum* emergit *et sic seipsum murdravit* and quashed, for *emergo* is to rise out and not to sink down in the water, and the going into the water, is no felony nor felonious, but it is the drowning that makes it felony, therefore the conclusion *et sic seipsum murdravit*, without the premises is bad. 3 Salk. 100, 101.

6. A coroner's inquest may be set aside for a misbehaviour of him in his office, and a *melius inquirendum* by B. R. as supreme coroner or B. R. may issue out a commission, or justices of oyer and terminer may inquire, but there cannot be a *melius inquirendum* to the coroner.
3 Salk. 100, 101.

7. A coroner's inquisition *super visum corporis*, of a man that hanged himself, finding him possessed of a mes-

suage which as a *felo de se* he forfeited was stayed filing upon an affidavit, that the man was dead five years before the inquisition was taken, and the coroner dug up a skull which he assured the jury he knew by a particular mark was the deceased's.

R. v. *Bond*, Stra. 22.

Seven months held two late.

Ibid.

III. *As to the Deodand.*

1. Where a cart met a waggon on the road, and the cart endeavouring to pass by the waggon was driven upon a high bank and overturned and threw the person that was in the cart just before the wheels of the waggon, and the waggon run over the man and killed him, held that the cart and waggon, loading, and all the horses were deodands, because they all moved *ad mortem*.

Case of *Ld. of Manor of Hampstead*, 1 Salk. 220.

2. So where one was riding on a horse in the river, the horse threw him and the stream carried him to a mill, and the wheel of the mill killed him, and held that the horse and wheel were forfeited. *Ibid.*

3. But if a man be thrown from the horse by the violence of the water, then the horse is not forfeited.

Ibid.

4. If a tree fall upon the branch of another and both fall to the ground, and the branch kills a man, the tree and branch are both forfeited.

Ibid.

4. A grand jury at the assizes have no power to make a presentment or inquisition of a deodand, viz. that the mare of I. K. was the cause of the death of W. S., and was of such a value especially if it be done secretly.

R. v. *Killinghall*, Burr. Rep. 17.

5. But justices of oyer and of the peace may make such a presentment which is traversable.

Burr. Rep. 19.

IV. *Coroner how punishable for Misconduct.*

1. A coroner made an inquisition of *felo de se* against a person who clearly appeared to be lunatic and the jury desired to find it so, but he acquainted them that finding it *felo de se* was only matter of course, but the jury coming afterwards to be better informed what the consequence would be, desired him to take the verdict so, whereupon he drew up a coroner's inquisition to that effect which they signed, but on a *certiorari* brought, he returned the first inquisition of *fele de se* in order to cover the goods, and the Court of K. B. stayed the filing of it, and committed the coroner.

R. v. *Wakefield*, Stra. 68.

2. A coroner's inquest having found one person guilty of murder, the coroner under pretence of engrossing the inquisition in Latin, inserted in the inquisition, the name of two other persons as being also found guilty by the jury of the same murder; and afterwards two of the jury making oath that they found the inquisition only against the one party, an information was exhibited against the coroner for a forgery which was tried at bar and he found guilty, but (having compounded with the prosecutor) was fined only twenty nobles.

R. v. *Marsh*, 3 Salk. 172.

3. The Court of K. B. granted a criminal information against a coroner for refusing to receive proper evidence on behalf of a prisoner, and for commiting him to gaol for murder, after the jury had brought in a verdict of accidental death which was recorded by him.

R. v. *Scorey*, Leach, 50.

COSTS.

1. Upon granting a criminal information the Court will not require the prosecutor to give security for the costs in case the defendant should be acquitted beyond the extent of the recognizance in 20*l.* required by 4 & 5 W. and M. c. 18. s. 2.

R. v. *Burk and Robinson*, 2 T. R. 197.

2. A rule being obtained for the prosecution of a criminal information

to pay costs for not going to trial, the defendant died before they were paid, and held that the executor could not have them.

R. v. *Earl*, Stra. 874.

3. The defendant having removed the indictment by *certiorari* into K. B. was convicted there and fined 50*l.* one third of which the prosecutor received, and having applied for his costs over and above such share of the fine, the Court refused it and said he could not have both, and directed the costs to be taxed upon the recognizance, and that so much as the prosecutor had received of the fine should be deducted out of the sum allowed.

R. v. *Osborne*, Burr. Rep. 2126.

4. Where a *certiorari* to remove a conviction on the game laws is issued out by the defendant in order to make defence to an action brought by the prosecutor for the same offence on refusal of the convicting justices to give a copy of the conviction, the prosecutor is not entitled to his costs in setting down and affirming such conviction by *certiorari*.

R. v. *Midlam*, Burr. Rep. 1720.

5. An indictment for perjury being removed by *certiorari*, the defendant made up the record and carried it down to the sittings with a distringas and Mr. Attorney's warrant for a tales; there being a special jury eleven only appeared and the counsel for the prosecutor would not pray a tales though the warrant was given them; and the counsel for the defendant not praying one, the cause was made a *remanet pro defectu juratorum* and upon motion for costs for not going into trial, the court held the defendant should pay none, he having done all that was necessary to put the prosecutor in a capacity to try the case if he would.

R. v. *Lowfield*, Stra. 937.

6. A defendant to an indictment removed into K. B. by *certiorari*, shall not pay the costs of not going to trial pursuant to his notice, if the trial go off for the want of a sufficient number of special jurymen, whereupon neither party pray a tales although the defendant was provided with a warrant for a tales.

R. v. *Righton*, Burr. Rep. 1694.

7. For the prosecutor might have come prepared with a warrant for a tales, if he had thought proper.

Ibid.

8. Costs are to be paid for not going to trial on an information according to notice although not filed a whole year.

R. v. *Heydon*, Bl. Rep. 356.

9. A defendant acquitted contrary to the direction of a Judge upon an information for a libel, is nevertheless entitled to costs by 4 and 5 W. and M. c. 18. although the Chief Justice certified *ore tenus* that it was a verdict against evidence; for it is not discretionary but compulsory on the Court where there is no certificate. *R.* v. *Woodfall*, Stra. 1131.

10. Yet on an information against three whereof one only was acquitted, he shall not have costs on the statute, because till the statute 8 & 9 W. 3. the plaintiff never paid costs in any action, if but one defendant was found guilty, and the act 4 and 5 W. and M. c. 18. cannot be intended to make prosecutors otherwise liable than as plaintiffs were before in such actions.

R. v. *Danvers & al.* 1 Salk. 194.

11. A justice of the peace who has prosecuted a gaoler to conviction for suffering a prisoner to escape committed by him on a charge of felony, is not entitled to costs under a stat. 5 & 6 W. and M. c. 11. s. 3. it not being carried on by the prosecutor *ex officio* as a magistrate and he not being the party grieved.

R. v. *Sharpness*, 2 T. R. 47.

12. Persons dwelling near to a steam engine which emitted volumes of smoke affecting their breath, eyes, cloathes, furniture, and dwelling houses, and prosecuting an indictment for it, are *parties grieved* entitled to have their costs under the above mentioned statute.

R. v. *Dewsnap & al.* 16 E. R. 194.

13. In the second and third section of the above statute requiring a defendant removing an indictment from the sessions by *certiorari*, to find two sufficient manucaptors who shall enter into recognizance in 20*l.* conditioned to appear plead and try, &c. and that if the defendant be convicted, &c. the Court shall give *reasonable* costs to be taxed, &c. *and that the said recognisance shall not be discharged till the costs so taxed shall be paid*; the amount of the costs to be taxed is not limited by such recognizance which is only a further security for them, and the Court will not discharge the recognizance till the taxed costs are paid to the prosecutor.

R. v. *Teal & al.* 13 East. 4.

14. These sections of the above act attach only upon a defendant *convicted by judgment*, and therefore if after a verdict of guilty the judgment be *arrested*, no costs can be taxed for the prosecutor.

R. v. *Turner, & al.* 16 E. R. 570.

CUSTOM.

1. It is a good custom in London to punish by information in the Court of Aldermen, for an *assault on* and contemptuous words spoken of an alderman in the execution of his office. *R.* v. *Rogers*, 2 Salk. 425.

2. It had been doubtful if the offence had been by words only, because no indictment lay at common law, yet for an assault he is punishable, and that may be by information there by the custom, as well as in B.R. by the course of the court. *Ibid.*

DATES.

1. When both the year of our Lord and of the king's reign are inserted in an instrument, it is merely surplusage and will not hurt.

R. v. *Everard*, 1 Ld. Raym. 968. 1 Salk. 195.

DISCONTINUANCE.

1. The *distringas juratores* must be tested on the *very day* on which the *venire facias* is returnable: and if it be tested on the following or any subsequent day the proceedings will be discontinued.

R. v. *Tuckin*, Ld. Raym. 1061. 1 Salk. 51.

DISSENTERS.

1. Methodists and dissenters have a right to the protection of the Court of King's Bench if interrupted in their decent and quiet devotions.

R. v. *Wroughton*, (Salk.) Bur. Rep. 1683.

ERROR (WRIT OF).

1. The Court refused to reverse a judgment, upon error brought upon an attainder for a rape, because it was not said in the caption, *ad tunc et ibidem jurat, &c.*

R. v. *Pheasant*, Ld. Raym. 548.

2. A writ of error was brought of a judgment by the commissioners of oyer and terminer for the county of Derby, on an indictment for not repairing a highway: and the indictment set forth that the inhabitants of such a part of the three parishes in Derby as the way lies in are bound to repair. The writ of error was of judgment on an indictment against the inhabitants of the three parishes in general, *ad grave damnum* of them, and for this variance the writ of error was quashed.

R. v. *Inhabitants of All Saints, Derby.* Stra. 1110.

ESCAPE.

1. A person cannot be convicted on 16 Geo. 2. c. 31. for conveying instruments into a prison to facilitate the escape of a prisoner confined therein, if it appear either by the indictment or on evidence that the commitment was for *suspicion* only, for the act has only made the offender guilty in cases where the prisoner "was committed to or detained in any gaol for treason or *felony expressed* in the warrant of commitment or detainer, and by these words the legislature evidently meant the offence should be *clearly and plainly expressed*, which can never be the case when the commitment is on *suspicion* only.
   R. v. *Walker*, Leach, 114. See *R.* v. *Greenif*, Leach, 401. *R.* v. *Gibbons*, O. B. April Session 1785, and *R.* v. *Gregory*, Leach, 115. *n.* to the same point.
2. An indictment on 16 Geo. 2. c. 31. which makes it felony to aid and assist any prisoner in *an attempt* to make his escape, charging the prisoner with having aided and assisted such an attempt, need not state that the party aided did attempt to make the escape, for he could not have aided if no such attempt had been made.
   R. v. *Tilley & al.* Leach, 759.
   The stat. 16 Geo. 2. does not extend to a case of such aiding where an *actual escape* ensues. *Ibid.*
3. Judgment was arrested upon an indictment against the defendant, charging him that he being keeper of Newgate, one *B.* was committed thereto, and the said *B.* being in custody of defendant, *oneratus alta proditione*, defendant negligently suffered him to escape, because it was only averred in the indictment that *B.* was *charged* with high treason, and not *committed* for it.
   R. v. *Fell*, 1 Ld. Raym. 424.
   2 Salk. 272.
4. The precedents are *cujus causa commissus fuit*, and Holt Ch. J. reprehended the king's counsel for not following the ancient precedents. *Ibid.*
5. A prisoner committed to the sheriff is in the custody of the jailer, and then if the latter permits him to escape he is accountable. *Ibid.*
6. A commitment to a *prison*, and not to a *person*, is good. *Ibid.*
7. Upon an indictment for an escape, the Court will not intend a pardon, but it must be shewn by the defendant by way of excuse. *Ibid.*
8. A merchant of London, convicted of having contrived and effected the escape of several French prisoners of war, was fined £50.
   R. v. *De Tessier*, Bl. Rep. 268.

EXCOMMUNICATO CAPIENDO.

1. An *excommunicato capiendo* was quashed for uncertainty, being in *causa defamationis sive convicii*, which last is too loose a word.
   R. v. *Smith*, Stra. 940.
2. But the Court refused to quash an English *excommunicato capiendo* that was for slander *or* defamation, saying that was not uncertain, as *convicium* was.
   R. v. *Keat*, Stra. 950.
3. A person in custody upon this writ cannot be discharged upon an *habeas corpus*, although the writ appears liable to be quashed.
   R. v. *Fowler*, 1 Ld. Raym. 618.
   1 Salk. 293.
4. But B. R. may quash this writ for informality and order a *supersedeas*, and then the defendant shall be discharged. *Ibid.*
5. Where this writ has been opened and enrolled in B. R. and the delivery of it to the sheriff is staid by the defendant till the return is out, Chancery may issue a second.
   R. v. *Eyre*, (Clk.) Stra. 1189.
6. It is good where it states the cause "to be on an appeal and complaint of nullity." *Ibid.*
7. So though the judge is made a party and condemned in costs. *Ibid.*

EXTORTION.

1. The chancellor and register of the Bishop of Sarum indicted for extortion, for forcing the executor of a will to prove the same in such Bishop's court, *ubi* they *bene sciebant* that the same will had before been proved in the Prerogative Court of Canterbury, by reason whereof they *extorsivè exigebant* of the said J. H. 40*s*.

R. v. *Loggen & Frome*, Stra. 73.

2. And such an indictment is maintainable, for the probate is only voidable, and being the act of the superior had so far taken away the power of the inferior, that he could not exercise his jurisdiction till that voidable probate was avoided. *Ibid.*

3. In such a case the chancellor (Dr. Loggen) did not act as a judge between party and party, but was only to determine whether he was to have such fees or not, and the protection of judges from indictments extends only to judges in courts of record, and not to ministerial officers. *Ibid.*

4. To say *bene sciebant* in such an indictment seems sufficient, especially as in this case the second probate was affixed to the same copy as the first. *Ibid.*

5. The sessions have jurisdiction of extortion, for their commission has in it the word *extortionibus*. *Ibid.*

6. Such an indictment need not alledge what was the just fee, especially as in this case the defendants had no title to any fee at all. *Ibid.*

7. Although these defendants' offices were distinct, yet the Court held they might be indicted jointly, for *per* Parker, that might be an exception if they were indicted for taking more than they ought, but it is only against them for *contriving to get money where none is due*, and this is an extra charge, for there can be no accessaries in extortion, and he that is assisting is as guilty as an extortioner. *Ibid.*

8. Qy. Whether this was not an indictment for *a conspiracy to defraud*, and not for *extortion*. *Ibid.*

9. Several persons may be jointly indicted for extortion,

R. v. *Atkinson & al.* Ld. Raym. 1248. Salk. 382.

EVIDENCE.

I. *By Accomplices.*
II. *Confessions by the Prisoner.*
III. *Death-bed Declarations.*
IV. *Depositions taken before Magistrates.*
V. *Deeds, Books, Papers, &c.*
VI. *Who are competent Witnesses.*
VII. *General Rules of Evidence.*

I. *By Accomplices.*

1. An accomplice can only be admitted a king's evidence by making a full and fair disclosure of the guilt of himself and his accomplices in regard to all their offences. Mrs. Rudd having made information before three magistrates, confessing that she had signed one of three bonds suspected to have been forged by the two Perreaus and herself, but that she had done it under very particular solicitations from Robert Perreau, and that he and Daniel Perreau holding a penknife to her throat had violently threatened her life in case she refused, by which means she was forced to comply; the magistrates conceiving this to be a confession of *her own* guilt, admitted her in *the character of an accomplice* a general witness for the crown as to *all* forgeries, telling her that if she would speak the truth and the *whole* truth, not only in respect of the bond in question but of *all other forgeries*, that then she should be safe. She denied however having any knowledge or concern in any of the other bonds. Robert Perreau was on the 1st of June 1775 convicted of uttering the bond (for £7,500.) stated by Mrs. Rudd in her confession to have been signed by her under compulsion as before mentioned, and on the next day Daniel Perreau was convicted of

uttering another of the bonds (for £3,300); and it appeared upon Robert Perreau's trial that Mrs. Rudd had confessed she *was guilty* of *forging* the bond for £7,500, and that Robert Perreau *was innocent*. Upon this she was committed to Newgate to answer the said forgery; one detainer was lodged against her for forging a bond for £5,300 and a second detainer for forging the bond for £7,500. Having obtained an *habeas corpus* she applied to the Court of King's Bench to be admitted to bail, but which was refused by the Court upon the ground that she had not made a *full and fair disclosure of all she knew*, and that in her information she flatly contradicted herself, for *on a voluntary confession of her own* (as before stated), she took the whole guilt upon herself, said that she alone forged the bond for £7,500, and that Robert Perreau was an innocent man, and by that confession she made herself not only the *principal* but the *only* person guilty: on *one bond* she was totally silent and denied any knowledge of the *other two*. Her information therefore was false and the conditions offered her by the justices not complied with.

R. v. *Rudd*, 1 Leach. C. L. 135. Cowp. 331.

Mrs. Rudd was afterwards tried for forging the bond for £5,300, and the jury returned their verdict "*according to the evidence before us not guilty.*" *Ibid.*

2. If a jury weighing the testimony of an accomplice think him worthy of belief, they may convict of a capital offence upon such evidence alone.

R. v. *Attwood & Robbins*, Leach, 521.

See *Jordaine* v. *Lashbrooke*, 7 T. R. 609. where the above case is cited and relied on by Mr. J. Grose, who said this is not new law nor founded on new principles, for in 1 Hal. 303, 304, 305, there are different instances of convictions on the evidence of accomplices; one in 1672 of a conviction of Hyde and others of a robbery on the highway on the testimony of one who was a party to the robbery but not indicted.

3. A prisoner may be convicted on the evidence of an accessary after the fact who received the goods stolen, though uncorroborated by any fact except that of a felony having been actually committed.

R. v. *Durham & Crowder*, Leach, 538.

4. An accomplice may give evidence before a grand jury against a *particeps criminis* although such accomplice be not previously admitted a witness for the crown, and was carried before the jury by an illegal and surreptitious order from the prison to which he had been committed for the same offence.

R. v. *Dodd*, Leach, 184.

This point was reserved and Mr. J. Aston in delivering the opinion of the Judges, said that they were unanimously of opinion that the necessity of some proper authority to carry a witness who was in custody before the grand jury to give evidence, regarded the justification of the gaoler only, but that no objection on that account could be made by the party indicted, for in respect of him the finding of the bill was right and according to law. Leach, 186.

5. An accomplice who has been admitted by the magistrates a witness for the crown is not therefore exempted from *prosecution*, and it depends upon his making a full disclosure of the joint guilt of himself and his companions whether the King's Bench will admit him to bail, that he may apply for a pardon.

R. v. *Rudd*, Leach, 135.

6. A principal felon may by virtue of the stat. 22 G. 3. c. 58. be admitted a witness against his accessary for receiving the goods which he stole.

R. v. *Haslam*, Leach, 467. S. P.

R. v. *Price and Collins*, Leach, 468. n.

II. *Confessions by the Prisoner.*

1. A confession induced by saying "unless you give us a more satis-

factory account I shall take you before a magistrate" is inadmissible, for though it scarcely amounts to a threat yet it certainly was a strong invitation to the prisoner to confess.

R. v. *Thompson*, Leach, 325.

2. So also a confession made in consequence of these words used to a prisoner "I am in great distress about my irons, tell me where they are and I will be favourable to you" was not admitted.

R. v. *Cags*, Leach, 328. *n.*

3. The *slightest hopes* of mercy held out to a prisoner to induce him to disclose a fact, is sufficient to invalidate a confession. *Ibid.*

4. A confession made under the idea of being admitted a witness for the crown is *not a voluntary confession*, and therefore cannot be received in evidence.

Lambe's case, Leach, 636. *n.*

5. A prisoner may be convicted on his own confession proved by legal testimony, although it is totally uncorroborated by any other evidence.

R. v. *Wheeling*, Leach, 349. *n.*

6. Parole evidence cannot be given of the confession of prisoners made before a magistrate, for it must be intended that it was put into writing as the law requires (unless it clearly appears that in fact such confession never was reduced into writing).

R. v. *Jacobs & al.* Leach, 347.

7. Same point.

R. v. *Hinxmen*, and *R.* v. *Fisher*, Leach, 349. *n.*

8. But where a confession before a magistrate was proved *not* to have been reduced into writing, it was allowed to be proved by the *viva voce* testimony of two witnesses who were present.

R. v. *Hall & al.* Leach, 635.

9. A voluntary confession of felony made by a prisoner on his examination before a magistrate and reduced by the magistrate into writing, may be given in evidence on the trial, although the magistrate has neglected and the prisoner has refused to sign it but confessed it to be true.

R. v. *Lambe*, Leach, 625.

10. See *R.* v. *Bennet*, the circumstances of which were *precisely similar* to the above case of Lambe, where Mr. J. Wilson (who tried both cases), refused to receive such an examination in evidence, saying that it was competent to a prisoner under such circumstances to retract what he had said and to say that it *was false*, and the prisoner had *retracted in time*.

Leach, 627. *n.*

N. B. The note in Leach merely states that the prisoner confessed his guilt, which confession was put into writing but he refused to sign it, still however saying he was guilty of the offence.

11. In *R.* v. *Layer*, 6 Tr. 229. upon an indictment for high treason tried at the bar of the Court of King's Bench before Sir G. Pratt, the prisoner's confession before the privy council was admitted in evidence, although not signed by the prisoner.

Leach, 635.

12. Minutes of an examination before a magistrate taken in writing by the solicitor for the prosecution by the direction of the magistrate, which examination was neither signed by the magistrate or the prisoner, was on the authority of Lambe's case allowed to be read as evidence, although on the second examination the prisoner retracted all he had said on the first.

R. v. *Thomas*, Leach, 727.

13. Although a confession obtained in consequence of promises of favour, cannot be given in evidence, yet any acts done afterwards may be notwithstanding they are done in consequence of such confession.

R. v. *Warickshall*, Leach, 298.

Same point *R.* v. *Lockhart*, Leach, 430.

14. For a fact if it exist at all must exist invariably in the same manner whether the confession from which it is derived be in other respects true or false, facts thus obtained however must be fully and satisfactorily proved without calling in the aid of any part of the confession

from which they may have been derived and the impossibility of admitting any part of the confession as a proof of the fact, clearly shews that the fact may be admitted on another evidence, for as no part of an improper confession can be heard it can never be legally known whether the fact be derived through the means of such confession or not.

Ibid. and *R.* v. *Mosey*, Leach, 301. *n.*

15. But it should seem that so much of the confession as relates strictly to the fact discovered by it may be given in evidence, for the reason of rejecting extorted confessions is, the apprehension that the prisoner may have been thereby induced to say what is false: but the fact discovered shews that so much of the confession as immediately relates to it is true.

R. v. *Butcher*, Maidstone summer Assizes 1798, Leach, 301. *n.*

16. But still the conversation and confession of a prisoner cannot be received so as to couple it with those facts in order to make it the subject matter of proof. *Ibid.*

17. A person who is discovered (though by means of a confession obtained by such promises of favour as rendered it inadmissable evidence) to have purchased stolen property is yet a competent witness to prove that fact.

R. v *Lockhart*, Leach, 430.

III. *Death-bed Declarations.*

1. The declaration on oath given before a magistrate by the deceased after the mortal blow is given, may be received in evidence on an indictment for murder, although the party did not *express* any apprehension of fast approaching dissolution, if she really was in such a state as rendered almost immediate death inevitable and was thought by every person about her to be dying, and by her resignation appeared to feel the hand of death, and consider herself as a dying person.

R. v. *Woodcock*, Leach, 563.

2. On the trial of an indictment for murder an examination upon oath of the party wounded taken by a magistrate, but not in the presence of the prisoner or in other respects according to the stat. 2 & 3 P. and M. c. 10. cannot be read in evidence, although it appeared that the death of the deceased was inevitable and fast approaching and that she entertained some apprehension of the danger of her situation.

R. v. *Dingler*, Leach, 638.

3. The declaration of a convict at the moment previous to execution, cannot be given in evidence as the declaration of a *dying man*, for being attainted his testimony if he had been living could not have been received.

R. v. *Drummond*, Leach, 378.

IV. *Depositions taken before Magistrates.*

1. On an indictment for a rape the deposition on oath of the girl taken in writing before a magistrate and signed by him but not by her, may after her death be read in evidence at the trial of the prisoners, and the fact of penetration being proved by such deposition that of emission may be collected from all the circumstances of the case, though not stated in the deposition.

R. v. *Fleming & Windham*, Leach, 996.

2. It is not actually necessary to the validity of a deposition taken pursuant to the statutes of P. and M. that the deponent should sign it.

Ibid.

3. The Court made a rule upon a justice of the peace to produce an examination at a trial and the Chief Justice said, when things are evidence of themselves as corporation books, we make no rule to produce them but only that the parties may have copies which copies are evidence, but this examination is not evidence of itself without proving the hand of the party, and we must have the original for nothing else concludes the party.

R. v. *Smith*, Stra. 126.

4. An information before a justice made by the deceased on oath in the presence of the prosecutor may be

given in evidence on the trial although the deceased was not then apprehensive of death and did not die till three weeks afterwards.

R. v. *Radbourne*, Leach 516.

5. An information taken before a magistrate cannot be read in evidence after the death of the party who gave it on a prosecution for a misdemeanor.

R. v. *Payne*, 1 Salk. 281. 1 Ld. Raym. 729.

6. Nor in civil actions or appeals of murder. *Ibid.*

7. Evidence given for the king upon an indictment cannot be given upon a trial in a civil action for the party. 1 Ld. Raym. 730.

8. The information of an accomplice taken pursuant to the statutes of Philip and Mary, on being properly proved may be read in evidence against a prisoner on proving that such accomplice is dead.

R. v. *Westbeer*, Leach, 14.

9. Parol evidence of the information which had been given against the defendant before a justice of the peace, and on which the justice had granted a warrant to apprehend the defendant, cannot be given unless it be proved that such information was not reduced into writing, for it being the duty of every magistrate to take information in writing in all cases, the presumption is that he had done his duty.

R. v. *Fearshire*, Leach, 240.

V. *Deeds, Books, Papers, &c.*

1. In *civil* causes the Court will force parties to produce evidence which will prove against themselves, or leave the refusal to do it (after notice) as a strong presumption to the jury; but in a criminal or penal cause the defendant is never forced to produce any evidence though he should hold it in his hands in court.

Per Ld. Mansfield, *R.* v. *Harvey*, Burr. Rep. 2488.

2. It is not necessary in penal actions to give notice *to the defendant himself* to produce papers, &c.; notice to his agent or attorney is sufficient.

Cotes q. t. v. *Winter*, 3 T. R. 306.

3. There is no difference between civil actions and criminal prosecutions as to the evidence of papers. In neither case is the party bound to produce evidence against himself; but even in a criminal prosecution notice may be given to him to produce papers in his possession, and in case of his refusal or neglect, other evidence may be given of their contents.

The Attorney-General v. *Le Merchant, Exch.* 2 T. R. 201. *n.*

4. And notice to the defendant's agent or attorney in such case is sufficient. 2 T. R. 201.

5. The Court will not compel a defendant to produce books and papers of a private nature, as evidence against himself on a prosecution for a misdemeanor.

R. v. *Mead*, Ld. Raym. 927.

6. The Court refused to grant a rule to inspect state copies of the books of a corporation, it being an attempt to make the corporation furnish evidence in a criminal prosecution.

R. v. *Heydon*, Bl. Rep. 351.

7. The Custom House books are of a private nature in which a prosecutor has no interest, and therefore the Court will not allow them to be brought into court to prove a criminal fact against custom-house officers which would in effect be to compel the defendants to produce evidence against themselves.

R. v. *Worsenham, & al.* 1 Ld. Raym. 705.

8. The Court never makes a rule to bring such evidence into court, but only of records or deeds of a public nature. *Ibid.*

9. The daily book of a public prison kept by the clerk of the papers there, containing entries of the names of all prisoners brought into and discharged from the prison, which entries were not made by the clerk from his own knowledge of facts, but from information derived from the turnkeys and by other means, is nevertheless good evidence of the time of a prisoner's discharge from prison, unless such book can be falsified.

R. v. *Aickles*, Leach, 435.

10. Sentence of expulsion unappealed from given in evidence on an indictment for assaulting a fellow commoner of Queen's College Cambridge by turning him out of the garden, and held *conclusive* for the defendant.

R. v. *Grundon & al.* Cowp. 315.

11. The muster book transmitted by the officers of a ship to the Navy Office, and which was produced by the clerk of the tickets from the Navy Office, is evidence to prove that a seaman whose will had been forged belonged to the ship at a certain time, that at his decease there was money due to him, and that a ticket for the payment of the same was made out and delivered to a person who brought the probate of the forged will.

R. v. *Fitzgerald & Lee*, Leach, 24. & *R.* v. *Rhodes*, Leach, 29. S. P. and which was decided upon the authority of the first case.

12. The Gazette is good evidence of all acts therein contained relating to the King and the State.

R. v. *Holt*, Leach, 677. 5 T. R. 436.

13. The articles of war as printed by the king's printer are good evidence.

R. v. *Withers*, cited by Mr. J. Buller, Leach, 677.

14. The grand jury having a suspicion that a witness who grossly prevaricated in his evidence before them had been tampered with by a prisoner applied to the Court for the witness's deposition in writing taken pursuant to the statutes; but it was refused, for as the best evidence was the *viva voce* testimony of the witness, they could not abandon that and resort to the secondary kind of evidence.

Denbey's case, Leach, 580.

15. On the trial of an indictment for forging a bill of exchange the bill may be given in evidence, although it is not stamped pursuant to the stamp act.

R. v. *Hawkeswood*, Leach, 292. cited 2 T. R. 606. *R.* v. *Reculist*, Leach, 811. S. P.

The same point occurred in *R.* v. *Lee*, January session, 1784, and ruled the same.

Leach, 293. *n.*

16. A letter purporting to come from a prisoner's brother and left by the postman pursuant to its direction at his lodgings after his apprehension for a felony and during his confinement, but which never came into his possession until near a month after the commission of the felony wherewith he was charged, cannot be given in evidence against him on the trial of the indictment against him for such offence.

R. v. *Huet*, Leach, 956.

VI. *Who are competent Witnesses.*

1. A person who upon his examination upon the *voit dire* said that he had heard there was a God and believed that those persons who told lies would come to the gallows, but acknowledged he had never learnt the catechism, was altogether ignorant of the obligations of an oath, a future state of reward and punishment, the existence of another world and what became of wicked people after death, is incompetent to be examined as a witness.

R. v. *White*, Leach, 482. and see Leach, 483. *n. (b).*

2. But where a witness is an infant of such tender years as to be wholly incompetent to take an oath, the trial may be postponed until the witness is instructed in the nature of the obligation of an oath.

Leach, 482. *n.*

3. A Mahometan may be sworn on the Alcoran and give evidence on a criminal prosecution.

R. v. *Ryan et al.* Leach, 64.

4. And so in a civil proceeding, *Fachina* v. *Sabine*, at the council.

Stra. 1104.

5. A Scotch covenanter may be allowed to give evidence on a criminal prosecution on being sworn according to the custom of his sect, which is not to kiss the book.

D. Mildrone's case, Leach, 459.

6. A Quaker's affirmation was not al-

lowed to be read on a motion for an information for a misdemeanor.

R. v. *Wych*, Stra. 872.

7. A person though deaf and dumb from his birth may be sworn and give evidence on an indictment for felony, if intelligence can be conveyed to and received from him by means of arbitrary signs and tokens, and it appears that he has a knowledge of the tenets of Christianity, and that the true notions of the moral and religious nature of an oath and of the temporal danger of perjury, could be communicated to him.

John Ruston's case, Leach, 455.

8. In general a person is a competent witness, unless he be directly interested *in the event of the suit.*

Bent v. *Baker (in error)*, 3 T. R. 27. (And see 7 T. R. 62.)

9. In order to render a witness incompetent, it is necessary to shew that he must derive a *certain* benefit from the determination of the cause one way or the other.

1 T. R. 164.

10. The bare possibility of a witness being liable to an action in a certain event is no objection to his *competency.*

1 T. R. 163.

11. On an indictment for forging a bank note the cashier who is properly authorised to subscribe bank notes in his own name for the "Governor and Company of the Bank of England," and who gives security to them for the faithful performance of this duty, is a competent witness to prove that the bank note charged to be forged is not a genuine bank note, and that the name of a cashier subscribed thereto is not the hand writing of the witness.

R. v. *Newland*, Leach, 350.

12. The drawer of a bill of exchange is a competent witness to prove that the name of *the payee* indorsed thereon was a forgery, but in such case it being necessary to prove the identity of the payee, and the drawer of the bill being the best evidence of that fact, but he not being present to attest it, the letter of advice which the payee had received from the drawer was held insufficient to prove the fact.

R. v. *Sponsonby*, Leach, 37.

13. The assignee of a certificate to a navy bill whose name is charged to be forged to a receipt for the money, is not a competent witness to prove the forgery.

R. v. *Hunter*, Leach, 723. *(Thornton's case there).*

14. The supposed drawer of a promissory note unindorsed and not payable to order, having received a general release from the holder, is a competent witness to prove the forgery.

R. v. *Akehurst*, Leach, 178.

15. But the drawee of a bill is not a competent witness to prove that a receipt indorsed is a forgery, unless he has a release from the indorsee.

R. v. Taylor, Leach, 255.

16. An executor named in a subsequent will by the same testator to that which is charged to be forged, is not a competent witness to prove the forgery.

R. v. *Rhodes*, Leach, 31.

17. The person whose name is forged to a receipt and acquittance, is not an admissible witness to prove the forgery.

R. v. *Russell*, Leach, 10. See Salk. 283. Ld. Raym. 396. Stra. 129, 728.

18. If a banker pay a forged bill of exchange, and on settling accounts with the person whose name is forged do not charge him with the payment or make him any way debtor for the bill, the person whose name is forged as acceptor is a competent witness to prove the forgery.

R. v. *Usher*, Leach, 57.

19. A person whose name was forged as drawer of a bill, was held not competent to disprove an endorsement on the bill made by the party who forged it, respecting the payment of interest upon that bill.

R. v. *Crocker*, 2 N. R. 87.

20. A person who has been tricked into signing a promissory note, is

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bery, and the prosecutor is merely
able to state that one of them robbed
him, but which it was he is not able
to tell, both must be acquitted.
R. v. *Richardson & al.* Leach, 431.

an incompetent witness upon an indictment against the party for that offence.

R. v. *Whiting*, Ld. Raym. 396. 1 Salk. 283.

21. A convict under sentence of death is an incompetent witness although he produce the sign manual, for nothing less than a pardon *under the great seal* can restore the competency of the witness, and the sign manual is nothing more than his Majesty's *intention* to pardon.

R. v. *Gully*, Leach, 115.

22. A person convicted on an indictment for a conspiracy is not a competent witness.

R. v. *Priddle*, Leach, 496.

23. It is the infamy of the crime which destroys the competency, and not the nature or mode of punishment.

Ibid.

24. A person convicted of perjury *upon the statute*, although afterwards pardoned cannot be a witness, for the punishment is part of the judgment appointed by the statute; but it is otherwise if the conviction was at common law.

Anon. 3 Salk. 154.

25. Before the statute 31 Geo. 3. c. 35. a person convicted and whipped for petty larceny was an incompetent witness.

Leach, 497. *n.*

26. A pardon restores a person who has undergone the infamous punishment of pillory for a libel to his competency as a witness.

R. v. *Crosby*, alias *Philips*, 1 Ld. Raym. 39. 2 Salk. 689.

27. A person who has been convicted on 31 Geo. 2. c. 10. for taking a false oath to obtain the probate of a will, &c. but who is pardoned before judgment, is a competent witness.

R. v. *Reilly*, Leach, 509.

28. For a pardon not only respites the convict from punishment, but absolutely absolves him from the crime and restores him completely to his former competency and credit.

Ibid.

29. See *Cuddington* v. *Wilkins*, Hob. 67, 82. cited Leach, 512. where it is expressly determined that the king's pardon doth not only clear the offence itself, but all the dependencies, penalties, and disabilities incident to it.

30. A wife may give evidence against a prisoner although she entertain a hope that the conviction of such prisoner will tend to procure the pardon of her convicted husband, for this influence only affects her *credit* and not her competency.

Mrs. Perreau's case, Leach, 151.

31. Upon an indictment by the husband for an assault upon the wife, she was allowed on the authority of *Lord Audley's case* to be a good witness for the king.

R. v. *Azire*, Stra. 633.

32. Two being indicted for an assault one submitted and was fined 1s. and paid it, the other pleaded not guilty, and upon the trial he was allowed to call the other defendant, the matter then being at an end as to him.

R. v. *Fletcher*, Stra. 633.

33. Husband and wife shall not be called in any case to give evidence, even *tending to criminate each other.*

R. v. *Cliviger (Inhab.)* 2 T. R. 263.

Nor can they in any case be witnesses either for or against each other.

Devis v. *Duwoody*, 4 T. R. 678.

34. A witness admitting herself to have before sworn falsely upon the particular point, but attributing it to the persuasion of the defendant, is not an *incompetent* witness against him on an indictment for a conspiracy; but the objection goes strongly to her *credit.*

R. v. *Teal*, 11 E. R. 309.

35. Upon an indictment for perjury in evidence given at the trial of an ejectment, the Chief Justice refused to let any of the defendants in the ejectment against whom the verdict was given, be examined as witnesses for the prosecutor.

R. v. *Ellis*, Stra. 1104.

VII. *General Rules of Evidence.*

1. Evidence in all cases both criminal and civil must be *upon oath*, and therefore an infant prosecutrix upon

an indictment for rape cannot be received as a witness unless she be sworn.

R. v. *Powell*, Leach, 128. See 1 Stra. 701. Same point, *R.* v. *Brasier*, Leach, 237.

2. And in *Brasier's case* the Judges were unanimously of opinion, that an infant witness under the age of seven years may be sworn in a criminal prosecution, provided such infant appears on strict examination by the Court to possess a sufficient knowledge of the nature and consequences of an oath, for there is no precise or fixed rule as to the time within which infants are excluded from giving evidence: but their admissibility depends upon the sense and reason they entertain of the danger and impiety of falsehood, which is to be collected from their answers to questions propounded to them by the Court.

Leach, 238.

3 A witness cannot be cross-examined as to any distinct collateral fact not relevant to the matter in issue, for the purpose of disproving the truth of the expected answer by other witnesses, in order to discredit the whole of this testimony.

Spenceley, q. t. v. *Willott*, 7 E. R. 108.

4. A witness may refresh his memory by *any* book or paper, if he can afterwards swear to the fact from his own recollection; but if he cannot swear to the fact from recollection any farther than in finding it entered in a book or paper, the *original* book or paper must be produced.

Doe d. Church v. *Perkins*, 3 T. R. 749.

5. Where a defendant in a prosecution for a libel had suffered judgment to go by default, and came up to receive judgment, the prosecutor was permitted to read affidavits in aggravation, containing expressions made use of by the defendant confirming and aggravating his guilt, which had been uttered by him in the hearing of two persons, and by them afterwards related to the persons making the affidavits, the prosecutor having first entitled himself to this evidence by swearing to an application to both those persons to come forward with their testimony, which they had refused, and it appearing to the court that those witnesses were under the control of the defendant.

R. v. *Archer, M.* 28 *G.* 3. 2 T. R. 204 *n.*

Otherwise, where it does not appear that such third person is under the control or influence of the defendant.

R. v. *Pinkerton*, 2 E. R. 357.

N. In this last case some doubt seems to be cast on the authority of *The King* v. *Archer.*

6. On an indictment against an apprentice for enlisting himself as a soldier without the consent of his master, the indentures must be proved by one of the subscribing witnesses.

R. v. *Jones*, Leach, 208.

7. The party interested in the testimony of a witness who is objected to on account of his having been convicted of felony and his imprisonment being unexpired, is entitled to insist on proof of such conviction by the record, though admitted by the witness himself.

R. v. *Castell Careinion (Inhab.)* 8 E. R. 77.

8. Formerly the rule was to object to the competency of a witness before he was sworn in chief, but still the objection must be made at the trial.

1 T. R. 717.

9. A witness may be asked whether he has not been in the pillory for perjury.

R. v. *Edwards*, 4. T. R. 440.

10. An attorney for a defendant indicted for perjury in an answer in Chancery, who was present at putting in the answer, is not compellable to prove that fact.

R. v. *Watkinson*, Stra. 1122.

11. If two men are indicted for robbery, and the prosecutor is merely able to state that one of them robbed him, but which it was he is not able to tell, both must be acquitted.

R. v. *Richardson & al.* Leach, 431.

12. Refusing to give evidence to the grand jury is a contempt fineable.
The King v. *Lord Preston*, M. 3 W. & M. K. B. 1 Salk. 278.

FEME COVERT.

A *feme covert* may be committed to the house of correction for disobeying an order of justices made on her for not maintaining a bastard born previous to her marriage.
R. v. *Taylor*, Burr. Rep. 1680.

FINE.

1. Where a fine and ransom is mentioned in a statute, the word *ransom* imports a sum treble to the fine.
3 Salk. 33. *sed. qu.* Co. Litt. *contra.*
2. Where a statute imposes a fine certain upon any conviction, the Court cannot mitigate it, but if the party comes in *before* the conviction and submits himself to the court they may assess a less fine, for he is not convicted and perhaps never might.
3 Salk. 33.
3. But though the fine is certain the Court of Exchequer may mitigate it, because it is a court of equity and they have a privy seal for it.
Ibid.

FISH.

1. Upon a conviction under 5 Geo. 3. c. 14. it must appear that the fishing was *against the consent of the owner*, or it is bad.
R. v. *Corden*, Burr. Rep. 2279.
R. v. *Fletcher*, and *R.* v. *Gould*, S. P. Burr. Rep. 2283.
2. If the owner had been the informer that would have shewn his dissent.
Burr. Rep. 2279.

FORCIBLE ENTRY.

I. *As to the Fact.*
II. *Restitution.*
III. *Indictment, Evidence and Judgment.*
IV. *Inquisition, form of.*
V. *Matters of Practice.*

I. *As to the Fact.*

1. At common law, where the party had a right he might enter with force, but by the statute 15 R. 2. he is restrained from entering with force though he hath *a right to enter*, neither can he enter peaceably and hold out *manu forti*, by 8 H. 6. c. 5.
Anon. 3. Salk. 169.
2. In these cases a man may either proceed civilly or criminally, and the former remedy is by writ of forcible entry, but the plaintiff can never recover in this action unless he maintain his writ that defendant *expulit et disseisit eum.* *Ibid.*
3. Upon an inquisition taken upon view by one justice and restitution awarded, the justice is bound to accept a traverse tendered of not guilty to the inquisition.
R. v. *Bengough*, 3 Salk. 169.
4. An indictment for a forcible entry may be maintained at common law though the statute gives other remedies to the party grieved, provided that the indictment charge the defendant with having used such force as constitutes a breach of the peace.
R. v. *Wilson et al.* 8 T. R. 357.
5. If such indictment charge the defendants with having unlawfully and with a strong hand entered the prosecutor's mill and expelled him from the possession, it is good.
8 T. R. 357.

II. *Restitution.*

1. If an inquisition of forcible entry comes into the King's Bench by *certiorari*, there can be no restitution if the defendant either traverses the force or pleads three years quiet possession before the force.
R. v. *Harris*, 1 Ld. Raym. 440.
1 Salk. 260.

2. Where restitution is not ordered till three years after the inquisition, it is bad.
R. v. *Harris*, 3 Salk. 313.

3. If possession under a writ of restitution on an inquisition for a forcible entry is avoided immediately after execution by a fresh force, the party shall have a second writ of restitution without a new inquisition.
R. v. *Harris*, 1 Ld. Raym. 482.

But the second writ must be applied for within a reasonable time.
Ibid.

4. Where an inquisition for a forcible entry is quashed after restitution granted, if the restitution was first, it is discretionary in the Court to award re-restitution, but if tortious, it is matter of right. *Ibid.*

5. If the defendant pleads three years possession in stay of restitution upon an inquisition of forcible entry, and upon traverse it is found against him, he must pay costs.
R. v. *Goodenough*, Ld. Raym. 1036.

6. A conviction for a forcible entry being quashed for the objection of *messuagium sive tenementum* the court ordered restitution, although there was an affidavit that the party's title was expired since the conviction, and said they had no discretionary power.
R. v. *Jones*, Stra. 474.

7. Restitution denied upon quashing inquisition of forcible entry, a lease for years standing out.
R. v. *Joslin et al.* 2 Salk, 587.

8. Traverse to inquisition of forcible entry is a *supersedeas* to restitution.
Q. v. *Winter*, 2 Salk. 588.

9. After a *certiorari* to remove an inquisition of forcible detainer, the justices cannot award restitution.
Sr. G. Kneller's case, 1 Salk. 151.

III. *Indictment, Evidence, and Judgment.*

1. An inquisition for a forcible entry stating only *in messuagium existens*, a school house *ad tunc existen tenementum de* J. S. *intraverunt*, and the said J. S. *disseisit expulsum et ejectum extratenuerunt* quashed, there being no positive charge of *disseisin*, for it is only put adjectively, and an expulsion is not laid or that J. S. *disseisit*, &c. which is a conclusion without sufficient premises.
R. v. *Dormy (or Dorny)*, 1 Ld. Raym. 610. 1 Salk. 260.

2. Indictment that W. R. being *seised* and *possessed*, &c. defendant entered, adjudged ill for the uncertainty.
3 Salk. 170.

3. So where the indictment was that W. R. entered and *disseised him*, for though a *disseisin* may imply a *freehold*, yet it ought to be expressed. *Ibid.*

4. Indictment reciting the statute 8 Hen 6. to be, if any one be expelled *vel disseised* adjudged ill for the statute is *si aliquis expulsus et disseisitus* in the *copulative* and not in the *disjunctive*.

5. So the person must be both expelled and disseised. *Ibid.*

6. Indictment for forcible entry quashed for not stating that the party was *seised* or *disseised* or what estate he had in the tenement, for if he had only a term for years then the entry must be laid *into the freehold of A.* in the *possession of W. R.* and the restitution must be accordingly. The word *seisin* is a term of art in this case, it being upon the statute of Henry 6.
R. v. *Griffith et al.* 3 Salk. 169.

7. An indictment against sixteen persons for a forcible entry was quashed upon motion because it did not appear on the face of the indictment to be an indictable offence, for though laid with force and arms, yet that applied only to the entry and not to the expelling and keeping out, besides it was only for unlawfully and unjustly entering a *close*, and the counsel said there ought to be such an actual force as implies a breach of the peace.
R. v. *Blake et al.* Burr. Rep. 1732.

8. And the number of the defendants made no difference, for neither an unlawful assembly or any thing of the kind was charged. *Ibid.*

IV. *Inquisition, (form of).*

It must appear upon the face of an inquisition for forcible detainer that the jury who took it were of the neighbourhood of the place where the detainer was, or at least of the county, and *probi* and *legales homines*.

R. v. *Crofts*, Ld. Raym. 926.

V. *Matters of Practice.*

1. The defendant having been convicted upon view by the Lord Mayor of London for a forcible detainer of the person of the plaintiff, and committed by the mayor till he paid a fine of £100 set upon him, the Court of King's Bench refused to bail him.

R. v. *Layton*, 1 Salk. 352.

2. The Court of King's Bench discharged a defendant out of custody by *habeas* who had been committed upon a conviction for a forcible entry upon view, for which no fine had been set.

R. v. *Elwell*, (Bart.) Stra. 794. Ld. Raym. 1514.

3. The Court of King's Bench cannot upon the removal of such conviction by *certiorari* set the fine, for they cannot execute the judgment of an inferior court. *Ibid.*

4. The Court of King's Bench will not on motion hold plea of a forcible entry of the King's Bench Prison and turning out the gaoler.

Sutton's case, Ld. Raym. 1005.

5. Upon a conviction of forcible entry if a fine be set, the conviction cannot be quashed upon motion, but the defendant must bring his writ of error; but if no fine be set then it may be quashed upon motion.

R. v. *Layton*, 2 Salk. 450.

FORGERY.

I. *By Statute.*
II. *At Common Law.*
III. *Indictment, Evidence, Venue and Trial.*

I. *By Statute.*

1. A receipt indorsed on a bill of exchange in a *fictitious name* is a forgery, although it does not purport to be the name of any particular person.

R. v. *Taylor*, Leach, 257.

2. It is no answer to a charge of forgery to say that there was *no special intent* to defraud any *particular person*, because a *general* intent to defraud is sufficient to constitute the offence.

Tatlock v. *Harris*, Leach, 257 *n.* See 3 T. R. 174.

3. An entry of the receipt of money or notes made by a cashier of the Bank of England in the bank book of a creditor, is an *accountable receipt* for any note for the payment of money within 7 G. 2. c. 22. and altering the principal sum by prefixing a figure to increase its numeration, is forgery.

R. v. *Harrison*, Leach, 215.

It seems that this statute did not prior to 18 G. 3. c. 18. extend to cases where this offence was committed with intent to defraud a corporation. *Ibid.*

4. To forge the form of a scrip receipt purporting to be that of one of the cashiers of the bank, in which the name of such cashier was not in any part inserted, but the place wherein such name ought to be inserted being left wholly blank and unfilled, cannot be laid as being a forgery of a *receipt* for money.

R. v. *Lyon*, Leach, 681.

5. An indictment for forgery *quod dam scriptum obligatorium* of J. S. held good, for 5 Eliz. c. 14. mentions false deeds as well as false writings.

R. v. *King*, 1 Salk. 342.

6. A forged draft on a banker is an order for the payment of money, within 7 G. 2. c. 22. although no

person of the name forged ever kept cash there.

R. v. *Lockett*, Leach, 111. See *Mitchell's case*, Fost. 119.

7. The names of the holders of a navy bill signed on a proper receipt paper and affixed to a navy bill, does not on the face of it purport to be a receipt for money, within the statutes 2 G. 2. c. 22. and c. 25. but as the money is paid on such signature, and it was always considered as *a receipt* at the Navy Office, it may by proper averment in the indictment be brought within the protection of those statutes as *a receipt for money*.

R. v. *Hunter*, Leach, 711.

8. It is not enough in such indictments to call such names a receipt, it should have averred that the names "W. T. and W. N." written on the said paper imputed and signified that the said W. T. and W. N. had received the sum of 25*l.* mentioned in the said paper writing.

Ibid.

9. The defendant being convicted on 5 Eliz. c. 14. upon an indictment, stating that G. and his wife were seized in fee of certain messuages lands and tenements called Jawick, in the parish of Clacton in Essex, and that defendant intending to molest them and their interest in the premises, forged a lease and release as from *G. & ux.* whereby they are supposed for a valuable consideration to convey to him "all that park called Jawick, in the parish of Clacton in Essex, containing eight acres in circumference, with all the deer, wood, &c. thereto belonging," moved in arrest of judgment that the premises supposed to be conveyed were so materially different from those which were really the estate of *G. & ux.* that it was impossible this conveyance could ever molest or disturb them. But per *Cur.* it is not necessary that there should be a charge or a possibility of a charge, it is sufficient that it be done with that intent, and the Jury have found that it was done with intent to molest G. and his wife in the possession of their land.

R. v. *Japhet Crooke*, Stra. 901.

10. If a person authorise another to sign a note in his name, dated at a particular place and made payable at a banker's, and the person in whose name it is drawn represents it to be the name of another person with intent to defraud, and no such person as the note and the representation import exists, this is forgery; for it is the *false making* of an instrument in the name of a never existing person.

R. v. *Parkes and Brown*, Leach, 899.

11. To forge an instrument purporting to be the *last will* of another is a capital offence, within 7 G. 2. c. 22. although the supposed testator be living.

R. v. *Sterling*, Leach, 117. *R.* v. *Cogan*, Leach, 503. Same point.

12. A forgery with intent to defraud A. B. C. D. &c. the stewards of the feast of the sons of the clergy, is within the statute which makes forgery capital.

R. v. *Jones and Palmer*, Leach, 405.

13. To indorse a bill in a *fictitious name* is forgery, although the fictitious signature was not necessary to the prisoner's obtaining the money, and his writing a false name was probably only done to conceal the hands through which the bill had passed, it appearing that the bill had been recently before stolen or lost out of a gentleman's pocket.

R. v. *Tuft*, Leech, 267. See *R.* v. *Taylor*, Leach, 257, S. P.

14. In the counterfeiting of a seaman's will, the offence of forgery is complete, although the offender write over the mark of the supposed testator a wrong christian name, differing from the christian name at the commencement of the will, which was the right one.

R. v. *Fitzgerald and Lee*, Leach, 24.

15. A writing across *the face* of a

bank note, introduced by the bank in the room of writing on the back, having always been accepted and taken to be an *indorsement*, is within 8 & 9 W. 3. c. 20, s. 36.

R. v. *Bigg*, Stra. 18. cited in Leach, 689.

16. It is an offence within the statute 31 G. 2. c. 22. to forge and counterfeit and cause and procure to be forged and counterfeited, a promissory note for the payment of *money*, with intent to defraud the Governor and Company of the Bank of England, although the word *pounds* is omitted in the body of the forged note, and there is no *watermark* therein.

R. v. *Elliot*, 1 Leach, C. L. 210.

17. In an indictment for feloniously disposing and putting away counterfeit bank notes, it is not necessary to aver *to whom* the note was so disposed of.

The intent to defraud the bank constitutes the offence, and it is not done away by the circumstance that the notes were furnished by the prisoner in consequence of an application made by an agent employed thereto by the bank, and that they were delivered to him as forged notes for the purpose of being disposed of by that agent.

R. v. *Holden & al.* 3 W. P. T. 334.

18. It seems that a person who has for many years been known by a name which he avers was not his own, and who afterwards assumes what he states to be his real name, and in that name gives a promissory note, is not thereby guilty of forgery, though the note was given by him to an accomplice for the purposes of fraud.

R. v. *Aickles*, Leech, 492.

19. If a person alter his own surname indorsed on a bill of exchange, to a surname beginning with the same initial, it is forgery, although there is no known person in existence answering to the forged name.

R. v. *Bolland*, Leach, 92.

20. Where a forged bill of exchange is of such nature that if real it would not have been valid or negotiable, the forging of it is not a capital offence, under the statute 2 Geo. 2. c. 25. and 7 Geo. 2. c. 22.

R. v. *Moffatt*, Leach, 483.

21. It seems that the words "received the above contents" inserted below a number of confused *memoranda* is not *a receipt or acquittance for money*, within the stat. 2 Geo. 2. c. 25. it being impossible to collect with any certainty whether the word *received* referred to the item of costs, or to any of the immaterial items of which the note was formed.

R. v. *Russell*, Leach, 11.

22. If A. pretending to be the executrix of C. receive money from B. on account of her supposed testator, and give a promissory note for it in a forged name as such executrix, this is a forgery within 2 G. 2. c. 15. s. 1. for the instrument is in this case false in itself.

R. v. *Dunn*, Leach, 68.

23. To make a *mark* to a promissory note in the name of another person, with intent to defraud the person whose name is assumed, is forgery.

Ibid.

24. Forging an office copy of the Accountant General's certificate is within the statute 12 G. 1. c. 32.

R. v. *Gibson*, Leach, 72.

25. Forging an order for the re-delivery of plate, delivered by a silversmith to the Goldsmith's Company for the purpose of being marked, pursuant to the directions of 13 G. 3. c. 26. is a capital offence within the statute 12 G. 2. c. 26.

R. v. *Jones*, Leach, 63.

26. The counterfeit making of any part of a genuine note, which may give it a greater currency, is forgery.

27. Therefore, if a note be made payable at a country banker's or at his banker's in *London*, who fails, it is forgery to alter the name of that *London* banker to the name of another *London* banker, with whom the maker makes his other notes payable after the failure of the first.

R. v. *Treble*, 3 W. P. T. 328.

28. A forged order for the delivery of

goods is not within 7 G. 2. unless it *be directed to the person who owns the goods;* and in an indictment for this offence it must appear that the person whose name is charged to be forged had an authority to make such an order as the forged order purports to be.

R. v. *Clinch*, Leach, 611.

29. A forged order on a tradesman in the name of a customer, *requesting* that the goods mentioned in it may be delivered to the bearer, is not within 7 G. 2. if the customer had no interest in the goods mentioned.

R. v. *Williams*, Leach, 134. See *R.* v. *Mitchell*, Fost. 119.

30. Upon the authority of *Mary Mitchell's case*, a note "please to send 10*l.* by the bearer, as I am so ill that I cannot wait on you," was ruled not to be within 7 G. 2. c. 22. for this appears to be a mere letter rather requesting the loan of money than ordering the payment of it.

R. v. *Ellor*, Leach, 363.

31. The Judges were divided in opinion upon the question whether to forge a *Scotch bank note* was an offence within 2 G. 2. c. 35. and if so whether the uttering of it in England was felony.

R. v. *Dick*, Leach, 79.

32. If a person engraves a counterfeit medicine stamp similar in some parts, dissimilar in others, to the legal stamp, and cutting out the dissimilar parts, utters the similar parts as genuine, concealing the space where the dissimilar part is cut out with wax, the offence is completed.

R. v. *Collicot*, 4 W. P. T. 300.

II. *At Common Law.*

1. To forge a receipt for goods which the defendant is bound to deliver is punishable as a forgery at common law, and if the information charge that he *existens onerabilis* to deliver &c. did with intent to defraud forge an indorsement &c. it is sufficient, for it is not necessary to shew an actual prejudice, a probability is enough if the forgery had stood.

R. v. *Ward*, 2 Stra. 747.
2 Lord Raym. 1461.

2. The offence of forgery is complete though the instrument was never published.

R. v. *Ward*, Lord Raym. 1469.

3. An indictment for forgery at common law is good, although it is not shewn that the party was prejudiced, therefore where the indictment was for forgery of a surrender of the lands of J. S. and it was not shewn in the indictment that J. S. had any lands, yet *per Holt* it is good.

R. v. *Goate*, 1 Lord Raym. 737.

4. An indictment for forgery is good and not repugnant, although it state that the party *falsely* forged a *false* writing. *Ibid.*

5. The sessions have no jurisdiction over the offence of forgery at common law, nor can they take cognizance of it as a cheat.

R. v. *Micah Gibbs*, 1 E. R. 173.

6. Therefore they cannot hold cognizance of an indictment charging that the defendant being a person assessed to certain duties granted upon income, by certain commissioners, and under pretence of being aggrieved, having appealed to certain other commissioners, and contriving and intending to deceive the said last-mentioned commissioners, and to induce them to believe that the particulars of his income delivered in, and the deductions claimed by him to be allowed, had been inquired into, examined, and approved by one *Richard Else*, then being clerk to the first-mentioned commissioners, and with fraudulent intent to give effect to his appeal, and to evade the duty at the bottom of a paper purporting to be a schedule of the defendant's income, did forge &c. the letters *R. E.* purporting to be the initials of the said clerk, and did exhibit to the Commissioners of Appeal the said paper &c. against the peace, &c. *Ibid.*

III. *Indictment, Evidence, Venue, and Trial.*

1. In an indictment for forgery a description to a common intent of the person's intended to be defrauded is sufficient; as where the forgery was laid to be of an order for payment of money, *purporting* to be an order under the hand of *H. H. A.* and directed to *Messrs. Drummond and Company*, Charing Cross, with intent to defraud Robert Drummond, Henry Drummond, George Drummond, and Andrew Berkley Drummond, by the name of *Mr.* Drummond, Charing Cross, it is sufficient, for the chief consideration is the *import* and operation of the words.
R. v. *Lovell*, Leach, 282.

2. The general rule of law on this subject is, that every averment necessary in an indictment must be stated with such a degree of certainty as will enable the party to learn the general nature of the crime he is accused of, and who are the accusers against whom he is to defend himself; and it is not necessary to describe the party meant to be defrauded with more particularity, for if any person can be intended from the words, who that person is and whether he was the meditated object of the fraud, are matters for the consideration of the jury. *Ibid.*

3. An indictment for forging a bill of exchange, purporting to be directed to George Lord Kinnaird, William Moreland, and Thomas Hammersley, by the names and description of Messrs. Ransom, Moreland, and Hammersley, "the *tenor* of which is as follows, viz. Messrs. Moreland, Ransom and Co." &c. is bad, for the purport and the tenor are repugnant.
R. v. *Gilchrist*, Leach, 753.
1 E. R. 180 *n.* East, 982.

4. An indictment for forging a scrip receipt, signed "C. Olier," stating "with the name C. Olier thereunto subscribed, *purporting* to have been signed by one Christopher Olier, and to be a receipt of the said Christopher Olier," is bad, for "C. Olier" does not upon the face of it *purport* to be *Christopher Olier*, but an indictment stating the *tenor* only, without any *purporting*, is good.
R. v. *Reeves*, Leach, 933.
East, 984.

4. In the above case Mr. Olier was not allowed to prove that the name "C. Olier" to the scrip was not his hand writing.
Leach, 938.

6. If upon an indictment on 36 G. 3. c. 74. for forging and uttering a scrip receipt, it should appear that the receipt was forged prior to the passing of that act, yet if *after that time* it was uttered and published as true, knowing it to be false, the offence of uttering is completed.
R. v. *Reeves*, Leach, 942.

7. In every indictment for forgery, the tenor of the instrument charged to be forged must be set out, that the Court may see that it is the instrument which it purports by its tenor to be, and that it is one of those instruments the falsely making or knowingly uttering of which comes within the statutes.
R. v. *Lyon*, Leach, 681. *R.* v. *Marsh*, East. P. C. 975. 1 E. R. 180 *n.*

8. But upon an indictment for publishing a forged *receipt for money*, with the name Stephen Withers &c. for the sum of 1*l.* 4*s.* it was held insufficient only to set forth the *receipt itself*, without setting forth the account to which such receipt referred, and at the foot of which it was subscribed, that account being only evidence to make out the charge.
R. v. *Testrick*, East. P. C. 977.
1 E. R. 181 *n.*

9. An indictment for forging a bill of exchange, stating that it *purported* to be directed to *John King*, by the name and description of *John Ring*, is bad and repugnant.
R. v. *Reading*, Leach, 672.
1 E. R. 180 *n.*

10. So where the indictment charged that the bill *purported* to be directed to Richard Down, Henry Thornton, John Freer, and John Cornwall, jun. by the names and description of Messrs. Down, Thorn-

ton and Co. it was holden bad on the authority of the preceding cases.

R. v. *Edsall*, Southampton Spring Assizes, 1798, *Cor. Thompson*, B. 1 E. R. 180 *n.* East. P. C. 984.

11. In an indictment for forging a bill of exchange, a variance of "*reicvd*" instead of "*received*" is not fatal, for considering it as an abbreviation yet if it meant only the same word as that word in the indictment, it would not vitiate, for then it could only mean the same thing, and there was not a possibility of mistaking it for any other word.

R. v. *Hart*, Leach, 172.

12. The words in an indictment for forgery "as follows, that is to say" do not bind the party to an exact recital.

Ibid, and *R.* v. *May*, 1 Dougl. 193.

13. Neither in an indictment for perjury do the words "in manner and form following, that is to say" bind the party to recite the instrument verbatim, for nothing more was requisite than a substantial recital; and therefore where upon an indictment against the defendant for perjury in his evidence as the prosecutor of an indictment against A. for an assault, the indictment for the assault charged that the prosecutor had received an injury, "whereby his life was greatly despaired of;" the indictment for the perjury introduced the indictments for the assaults in these words, "which indictment was presented in manner and form following, that is to say," and then set forth the indictment at length; but in reciting the perjury above mentioned the word "despaired" was omitted. Buller, J. held that the variance was only matter of form, and did not vitiate the indictment.

R. v. *May*, Leach, 227.

14. The word tenor has so strict and technical a meaning as to make a literal recital necessary.

Leach, 228.

15. In an indictment for forging a receipt, "as follows, that is to say," is a sufficient averment that the *tenor* of the recital is set out, and it is altogether as certain as if it had been said "in the words and figures following, that is to say."

R. v. *Powell*, Leach, 90.
Bl. Rep. 787.

16. In an indictment for forgery it is sufficient to aver a general intention to defraud a certain person, without setting out the particular mode by which the fraud was intended to be effected, which may be made out by facts in evidence at the trial.

Leach, 90.

17. An indictment for forging a certain paper writing, *purporting* to be the last will and testament of such a person, is good.

R. v. *Birch & Martin*, Leach, 92. Bl. Rep. 790. East. P. C. 980.

18. An indictment for forging a transfer of stock is good, although the stock had never been *accepted* by the person in whose name it stood; and although the transfer was not *witnessed* according to the rules and directions of the Bank.

R. v. *Gade*, Leach, 847.

19. Where in an indictment for forging a will, the will set out in the indictment began "I James Gibson," &c. and the will produced in evidence began "James Gibson," this variance in the pronoun was held to be fatal.

R. v. *Cogan*, Leach, 503.

20. An indictment for forging a deed of assignment of a lease, with the mark of J. S. need not set out the mark.

R. v. *Smith*, 1 Salk. 342.

21. Indictment for that defendant *fabricavit seu fabricari causavit* a bill of lading, held bad upon demurrer, for an indictment ought to be positive and certain, and is not given in this disjunctive.

R. v. *Stocker*, 1 Salk. 342, 372.

22. In an indictment against a prisoner for forgery, the words *fabricavit et contrafecit* are supported by evidence of erasing and altering the note by the prisoner; for it was a plain forgery if not a counterfeit, and the

word *fabricavit* would denote as much.

R. v. *Dawson*, Stra. 19.

23. Uttering a forged order for the payment of money under a *false representation*, is evidence of the knowledge of the forgery.

R. v. *Shephard*, Leach, 265.

24. If a man produce the real signature of a person existing, purporting to be the indorsement of such person on a bill of exchange, and falsely declare that he is the identical person whose indorsement it purports to be, this is not a forgery, for there must be a *false making* to constitute that offence.

R. v. *Hevey*, Leach, 263.

25. But in this case the prisoner was afterwards convicted with others of a conspiracy. *Ibid.*

26. All the Judges held, that upon an indictment for forging a bill of exchange, it need not be stamped in order to be given in evidence, notwithstanding 23 Geo. 3. c. 49. which is only a revenue law, and not purporting to alter the crime of forgery, could not affect that question.

Leach, 292. cited 2 T. R. 606.

27. Upon an indictment for disposing of and putting away a forged bank note, knowing it to be forged, the prosecutor may give evidence of other forged notes having been uttered by the prisoner, in order to prove his knowledge of the forgery.

R. v. *Wylie*, N. R. 92. S. P. *R.* v. *Tattersall*, Lancaster Assizes, 1801. *Cor.* Chambre, J. cited N. R. 93 *n.*

28. Upon an indictment for forging a will relating to personal estate, although a forgery was proved, yet the defendants producing a probate, that was held conclusive evidence in support of the will.

R. v. *Vincent & al.* Stra. 480.

29. An attorney is not bound to obey a *subp. duc. tec.* to produce papers entrusted to him by his client in confidence as vouchers, in order to give a person an opportunity of indicting his client for forging these papers.

R. v. *Dixon*, Burr. Rep. 1687.

30. The Court of King's Bench will not try an indictment for forgery of a will pending a suit concerning it in the spiritual court.

R. v. *Rhodes*, Stra. 703.

31. A forged bill was found upon the prisoner, who then resided in Wiltshire, and had resided there a year under a false name, but which bill bore date at a time when he resided in Somersetshire, in the neighbourhood of the person whose signature was forged, and more than two years previous to the bill being found upon him. On an indictment against him for forgery of the note in Wilts, this was held not to be sufficient evidence of the offence having been committed in the latter county.

R. v. *Crocker*, 2 W. R. 87.

GAMING.

A defendant being convicted on an information on the gaming act, which says that he shall forfeit five times the value upon conviction, the Court would not set a fine upon the defendant though he refused to speak with the prosecutor, and said "all the judgment we can give is *quod convictus est*, and a new action must be brought upon that judgment for the forfeiture," and the defendant was discharged without any fine or costs.

R. v. *Luckup*, Stra. 1048.

HABEAS CORPUS.

1. If it appear that an act of high treason be committed in Surrey, the Court of King's Bench will not under the habeas corpus act bail the party charged, for the prayer should be entered where the party ought to be tried, which in this case was at the assizes in Surrey.

R. v. *Leason & Edwards*, 1 Lord Raym. 61.

2. For the King's Bench cannot originally hold pleas of felony arising out of Middlesex. *Ibid.*

3. The defendant in the long vacation was committed for high treason, and lay till the first day of Michaelmas term, and was then brought up and charged with an indictment, and recommitted by rule of Court, and the first week in Hilary term applied to enter his prayer on the habeas corpus act, as standing upon the same terms with one originally committed since Michaelmas term, and upon the ground that a commitment by rule of court was the same as upon a warrant; but the Court refused under these circumstances to grant the defendant's prayer.

R. v. *Leonard*, Stra. 142.

4. So where a person committed for treason done in Scotland applied to enter his prayer on the act, which the Court refused, saying that that prayer was only to be tried, and they could not try a treason done in Scotland, nor would the Court enter his prayer and bail him at the end of the term, in case he was not before that time sent to Scotland.

R. v. *Mackintosh*, Stra. 308.

5. The Court will grant an habeas corpus to bring up a person stated to be confined and ill used, on the production of a letter from the party.

Archer's case, 1 Ld. Raym. 673.

6. The Court will not grant an habeas corpus to bring up alien enemies prisoners of war, however deceived by promises of being paid wages, and exchanged by a cartel.

Case of three Spanish Sailors, Bl. Rep. 1324.

7. The Court granted an habeas corpus to bring up an infant under twenty-one, who had eloped from her father and lived with her aunt, and was suspected to be going to Scotland, with the privity of her aunt, to marry; and the aunt keeping the girl from her father by force.

R. v. *Ward*, Bl. Rep. 386.

8. An habeas corpus *ad respond.* does not lie to the county palatine of Chester.

Anon. 1 Salk. 354.

9. A person committed for treason in Scotland is not within the habeas corpus act.

R. v. *Mackintosh*, 1 Stra. 308.

10. An information *qui tam*, on statute 8 Geo. 1. c. 7. for a fraud in weighing and packing butter, exhibited (by virtue of the said stat.) in the Sheriff's Court at York, may be removed into B. R. by habeas corpus *cum causâ*.

Hartley qui tam v. *Hooker*, Cowp. 523.

11. The Court was moved to grant an habeas corpus *ad test.* to remove T. Haydon in execution for perjury to the assizes, upon the affidavit of his being a material witness for one Burbage: and though in general such an habeas will lie to remove a person in execution to be a witness, yet in this instance it appearing that Burbage was indicted for perjury, in swearing the *very oath* upon which Haydon was convicted, and for which he was then under imprisonment, the Court refused the motion.

R. v. *Burbage*, Burr. Rep. 1440.

12. A peer must yield obedience to a writ of habeas corpus, and if he do not, an attachment will issue against him for the contempt.

R. v. *Ferrers*, (E.) Burr. Rep. 631.

And a resolution to this effect is entered on the Lords' Journals, 7th Feb. 1757.

13. The Court of King's Bench granted an habeas corpus to bring up the body of a wife confined by her husband on pretence of lunacy, on the production of a physician's affidavit that he had seen and conversed with the woman, and that he saw no sort of reason to suspect that she was or had been disordered in her mind.

R. v. *Turlington*, Burr. Rep. 1115.

14. An alias habeas corpus granted to the Stannary Court for an insufficient return.

Anon. 1 Salk. 350.

15. And the Court said, that if another insufficient return was made, they would grant an attachment.

Anon. 1 Salk. 350.

16. For an insufficient return the warden of the Stannaries may be amerced, and the coroners may offer it. *Ibid.*

17. Upon an habeas corpus brought, although the commitment appears to be informal, yet if upon reading affidavits the defendant appers to have been guilty of acts of public immorality, the Court will not discharge without bail given.

R. v. *Symonds*, 1 Ld. Raym. 699.

18. The Court will deliver an infant nine years of age brought up by habeas into the possession of her guardian, so young a child not having any judgment of her own.

R. v. *Johnson*, Stra. 579.

19. Where it appears that a party in whose behalf an application for an habeas has been granted is insane, and properly in custody as a lunatic, the Court will dispense with the body being brought up; and in this case it being shewn that a commission of lunacy would be shortly issued against the lunatic, the Court enlarged the return day of the habeas, in order to give time for the commission to issue.

R. v. *Clarke*, Burr. Rep. 1362.

20. Upon a party's being brought up by habeas, the court will not order her to go with a person pretending but who she denies to be her husband, but will only see that she is under no illegal restraint, and declare to her she is at liberty to go where she pleases.

R. v. *Clarkson & al.* Stra. 444.

21. In the above case, lest the habeas should be made use of by the person pretending to be the husband as a means to get the lady abroad and seize her, the Court ordered their tipstaff to wait upon her to her guardian's. *Ibid.*

22. A writ of habeas corpus directed to the sheriff *or* gaoler in the disjunctive, is bad.

R. v. *Fowler*, 1 Ld. Raym. 586.
1 Salk. 350.

23. And upon such a writ the gaoler should return the original writ, and not the warrant made thereon by the sheriff. *Ibid.*

24. Although a return to an habeas corpus be not so good as it might be, yet if sufficient appears upon it to justify retaining a prisoner in custody the Court will remand him.

R. v. *Bethell*, 1 Ld. Raym. 47.
1 Salk. 348.

25. The return to an habeas may be filed, because the *very record* below is not returned and therefore will not be thereby filed.

Fazarcharly v. *Baldo*, 1 Salk. 351.

26. The record itself is not removed by an habeas but remains below, but the habeas suspends the power of the court below so that if they proceed pending the writ, the proceeding will be *coram non judice.* *Ibid.*

27. The Court upon affidavit laid before them suggesting probable cause to believe that a helpless and ignorant foreigner was brought into this country and exhibited for money against her consent by those in whose keeping she was, granted a rule upon her keeper to shew cause why a writ of habeas corpus should not issue to bring her before the Court, and directed an examination to be taken of her in the mean time before the coroner and attorney of the Court, in the presence of proper persons deputed by the party applying for the writ, and by those against whom it was prayed.

Case of the Hottentot Venus, 13 E. R. 195.

HIGHWAY.

I. *What shall be deemed a Common Highway.*
II. *Who are bound to repair.*
III. *Certiorari.*
IV. *Points in particular Statutes relating to Highways.*
V. *Indictment, Pleas, Evidence, Trial, and Judgment.*

I. *What shall be deemed a Common Highway.*

1. A way leading to any market town and communicating with any great road is an highway, but if it lead

only to a church or to a house or village or to some particular close, it is a *private* way.

3 Salk. 393.

2. A navigable river is the king's highway for the use of himself and his subjects. *Anon.* Loft. 556.

3. Upon an information for stopping up a common foot-way, prosecutor proved that it had been a common passage under defendant's house as far back as any witnesses could remember; but the defendant producing a lease made for 56 years of this way, to the intent it might be a passage during the term which expired in 1728, the Ch. J. held defendant not guilty, and as to the leaving it open since he said that would not be long enough to amount to a gift of it to the public.

R. v. *Hudson*, Stra. 909.

II. *Who are bound to Repair.*

1. The parish at large are *primâ facie* bound to repair all highways lying within it, unless by prescription they can throw the *onus* on particular persons by reason of their tenure.

R. v. *the Inhabitants of Sheffield*, 2 T. R. 106.

2. The inhabitants of every parish of common right ought to repair the highways, and therefore if particular persons are made chargeable to repair the said ways by a stat. lately made and they become insolvent, the justices of peace may put that charge upon the rest of the inhabitants. *Anon.* 1 Ld. Raym. 725.

3. If the commissioners under an enclosure act set out a *private road* for the use of the inhabitants of nine parishes directing the inhabitants of six of these parishes to keep it in repair, no indictment can be supported against the latter for not repairing it, *it not concerning the public.*

R. v. *Richards & al.* 8 T. R. 634.

4. The *occupier* and not the owner is chargeable to repair the highways *ratione tenuræ*. 5 H. 7. c. 3. cited in *R.* v. *Corrock*, Stra. 187.

5. Where an highway lies over an open field and the owner of the field turns the way to another part of the field for his own convenience, or incloses the field for his own benefit and leaves a sufficient way besides, he is bound to maintain and repair that way at his own charge, and he must make it passable though it was founderous before.

3 Salk. 182.

6. And though in the above case it was proved that it was impossible to make a good way because of the soil, yet *per Cur.* the defendant in this case has bound himself to make the way good by enclosing the field, and though he has made the way as good as it can be, he shall not give that in evidence in *discharge of the information*, but he may give it in evidence in *mitigation of the fine.*

Ibid.

7. If a parish consisting of two districts which are bound to repair separately be convicted for not repairing the road in *one* of the districts, the other district having no notice of the indictment, the Court will consider it as being substantially the conviction of the one district; and if the fine be levied on an inhabitant of the other, will grant a *special mandamus* for a rate to be levied on the district bound to repair the indicted part of the road.

R. v. *Townshend & al.* 1 Dougl. 421.

8. Where a person about 45 years back erected a mill and dam for his own profit in and across a river, *per quod* he deepened the water of a ford through which there was a public highway, but the passage through which was before the deepening very inconvenient at times to the public, and the miller afterwards built a bridge over it which the public had ever since used, held that the county were liable to repair.

R. v. *Kent (Inhab.)* 2 Man. and Sel. 513.

III. *Certiorari.*

1. A *certiorari for the king* lies to remove an indictment for a nuisance in a highway though there be no affidavit made nor recognisance given

according to 5 W. & M. c. 11. 13 and 14 Car. 2. c. 6. 22 Car. 2. c. 12. and 3 W. and M. c. 12.

R. v. *Farewell*, Stra. 1209.

2. It is no objection to a *certiorari* to remove a presentment of a road made by a justice of peace under the 24th section of 13 G. 3. c. 78. that it is prosecuted by another than the justice presenting, if it be by his consent.

The King v. *Inhab. of Penderryn*, 2 T. R. 260.

3. A *certiorari pro rege* lies on stat. 13 G. 3. c. 78. s. 24.

R. v. *Bodenham Inhab.* Cowp. 78.

IV. *Points on particular Statutes relating to Highways.*

1. The power of two justices under 13 G. 3. c. 78. s. 16. to order ANY *highway to be widened* extends to roads *ratione tenuræ*.

R. v. *Balme et al.* Cowp. 648.

2. The commissioners appointed by stat. 6 G. 3. c. 78. (an act for dividing and inclosing certain lands in the parish of C.) which enacts, that the public roads to be set out by them should be repaired in such manner as other public roads are by law to be repaired, and that the private roads should be repaired by such *person or persons* as they should award, have no power to impose on the parish at large the burden of repairing any of the private roads set out in pursuance of the act.

R. v. *The Inhabitants of Cottingham.* 6 T. R. 20

3. If the inhabitants of a township, bound by prescription to repair the roads within the township, be expressly exempted by the provisions of a road act from the charge of repairing new roads to be made within the township, that charge must necessarily fall on the rest of the parish. 2 T. R. 106. If trustees under a road act turn a road through an inclosure, and make the fences at their own expense, and repair them for several years, they cannot be compelled to continue such repairs, unless there be a special provision in the act to that effect.

R. v. *the Commissioners of the Llandillo District*, &c. 2 T. R. 232.

What is meant by a road is the surface over which the subjects have a right to pass, and not the fences on each side. 2 T. R. 232.

The owners of the land are bound to repair the fences on each side, unless otherwise provided by the act. 3 T. R. 332.

4. Where a turnpike act gives directions for repairing the road *to* and *from* a town it *excludes* the town.

Hammond v. *Brewer*, Burr. Rep. 376.

5. It was stated in the case upon which the foregoing decision took place, that the town had lately before the passing the act been *paved* by the inhabitants, and that it was kept in repair by them and was then so. And in several parts of the act the roads are described as leading from, to and *through* such and such towns but when it mentions the town in question, it only says *to and from* it and omits "*through*." *Ibid.*

6. That branch of s. 19. of statute 13 G. 3. c. 78. (the general highway act,) which directs that "when an highway *hath been* diverted above twelve months, &c. if a new highway *hath been* made in lieu thereof and the same *hath been* acquiesced in, &c. every such new highway shall, from *thenceforth*, be the public highway," is *retrospective* only and it is not extended by s. 7. of 34 G. 3. c. 74. incorporating all the clauses and provisions of the act 13 G. 3.

Waite v. *Smith*, 8 T. R.

7. Another part of s. 19. of statute 13 G. 3. c. 78. provides for the diverting of highways for the future.

8 T. R. 133.

8. A presentment by a magistrate under stat. 13 G. 3. c. 78. s. 84. of nuisance in a highway must expressly alledge the offence to be done against the form of the statute.

R. v. *Winter*, 13 E. R. 258.

9. Where under an act for enclosing and dividing certain common fields, an allotment was made to A. B. and the commissioners award that there should be at all times for ever after the new enclosure, a public way or road leading &c. for persons to pass either on foot, horseback, or with cattle and carriages, into, over and through *the allotment* of the said A. B. and the same should be and remain of a certain breadth: and it appeared that the inhabitants of the hamlet of F. before the making of the enclosure were bound to repair the highway in question, (which was the same set out by the commissioners,) and that it was before the making of the act an ANCIENT *open* road lying unenclosed without hedge, ditch or fence, and continued to be so unenclosed at the time of the making the act and until the enclosure of it by A. B. and that within one year after the making of such award, the said A. B. enclosed his allotment, and the highway in question lay open for nine years longer and that then it was enclosed by the said A. B. with hedges, ditches and fences, and remained so enclosed during the whole time mentioned in the indictment. The Court of K. B. held that the inhabitants of the hamlet remained liable to repair the highway.

R. v. *Inhab. of Flecknow*, Burr. Rep. 460.

10. A presentment by a justice of the peace under 5 Eliz. c. 13. s. 9. that an highway was out of repair is traversable the same as an indictment.

R. v. *Wilts* (Justices), Burr. Rep. 1530.

11. The prosecutor of an indictment for obstructing an highway must shew himself to be the *party grieved* in order to obtain costs under 5 & 6 W. and M. c. 11. s. 3.; therefore where the prosecutor did not apply for costs until two years after judgment given, and it did not appear that he had ever used the highway before it was stopped, and whilst it was stopped declared he did not care about it, the Court held that he was not entitled to costs as the party grieved, although the prosecution was at his instance and expense. In this case the prosecutor was a minor at the commencement of the prosecution, his name was not on the back of the bill, and it appeared that he was only so far a party to the prosecution inasmuch as he defrayed the expenses.

R. v. *Incledon*, 1 Man. & Sel. 276.

12. The prosecutor of an indictment for stopping a common footway, who had used it for some years before it was stopped up, is a party grieved within the meaning of the stat. 5 & 6 W. and M.

R. v. *Williamson*, 7 T. R. 32.

V. *Indictment, Pleas, Evidence, Trial, and Judgment.*

1. An highway must in a presentment be alledged to lie *in* the parish, otherwise the parish is not bound to repair; to say *over* a ditch *between* enclosures within the parish of W. and the town of H. is not sufficient.

R. v. *Hertford Inhab.* Cowp. 111.

2. A parish is not liable to be indicted for suffering a highway to be very muddy and so narrow that people could not pass without danger of their lives; for first, it is no offence for the highways to be dirty, and secondly the parish had no power to widen it, for there is a particular power vested by act of Parliament in justices of the peace to do so.

Q. v. *Stratford Inhab.* Ld. Raym. 1169.

3. A presentment of a road under stat. 13 G. 3. c. 78. s. 24. against a smaller district than a parish must state expressly *how* they are liable.

R. v. *the Inhabitants of the Hamlet of Penderryn*, 2 T. R. 513.

4. If it do not the judgment may be arrested. 2 T. R. 513.

5. If a *division* of a parish be indicted for not repairing an highway lying therein, it must appear upon the face of the indictment *how* they are bound to repair; it is not enough to say that they immemorially ought

to repair it, but it should be shewn that they *have* repaired.

R. v. *Great Broughton Inhab.* Burr. Rep. 2701.

6. Indictment for stopping up a footway *ad ecclesiam*, and laid to be *ad commune nocumentum* &c. held good for the church may be the *terminus ad quem* and the way may lead further. 3 Salk. 392.

7. An indictment for not repairing an highway leading *from* the parish of A. *towards* and *unto* the parish of B. is *exclusive* of B. although it go on to alledge that the part of the said road which is out of repair *is in* the parish of B.

R. v. *Gamlingay Inhab.* Leach, 696. 3 K. 513. See 2 Roll. Abr. 81. and *Hammond and Brewer*, 1 Burr. Rep. 376.

8. It is no objection to an indictment against part of a road out of repair, that it describes it as leading from a HAMLET towards and unto such a market town.

R. v. *Inhab. of Harrow*, Burr. Rep. 2091.

9. If the description of part of a road out of repair be *from* A. *to* B. both places are excluded. *Ibid.*

10. In an indictment for not repairing an highway which defendant was bound to do *ratione tenuræ* of a certain house which in another place was mentioned to be *defendant's* mansion house, it is not necessary to say, *ratione tenuræ suæ*.

R. v. *Corrock*, Stra. 187.

11. But even if the word *suæ* were necessary, it was held explicitly averred by calling it afterwards defendant's mansion house. *Ibid.*

12. So where a defendant was charged *rationæ tenuræ quorundam terrarum et tenementorum*, the indictment was held good without *suorum*.

R. v. *Fanshaw* cited. *Ibid.*

13. In an indictment for a nuisance in an highway *communi strata sive alta via* held good, for *strata* signifies the highway, and these two expressions denote the same place.

R. v. *Hammond*, Stra. 43.

14. In an indictment for a nuisance in an highway it is not necessary to insert the *terminus a quo* or *ad quem* the way led, for the highway is infinite and leads from sea to sea. *Ibid.*

15. Indictment for non-repair of a highway within certain limits charging the corporation of Liverpool with a prescriptive liability to repair all common highways, &c. within such limits, "excepting such as ought to be repaired according to the form of the several statutes in such case made" is bad, for want of shewing that the highway in question was not within any of the exceptions.

R. v. *The Mayor, &c. of Liverpool.* 3 E. R. 86.

16. A count stating the defendant's liability to arise by virtue of an agreement with the owners of houses along side of the highway, is also bad; for the parish who are *primâ facie* bound to the repair of all highways within their boundaries cannot be discharged from such liability by any agreement with others. *Ibid.*

17. If a parish lies in two counties, the indictment for not repairing the highway must be brought against the parish in the county where the ruinous part of the way lies.

R. v. *Inhab.* of that part of the parish of *Weston* lying in the county of Gloucester, 4 Burr. Rep. 2507.

18. If a parish be situate part in one county and the rest in another, and a highway lying in one part be out of repair, an indictment against the inhabitants of *that part only* is bad.

R. v. *the Inhab. of Clifton*, 5 T. R. 498.

19. In such case the indictment must be against the whole parish, 5 T. R. 498.

20. But formerly it was held that if a parish lies in two counties the inhabitants *of that part* of the parish in which the road charged to be out of repair lies are bound to repair it, and not the inhabitants of the whole parish.

R. v. *Inhab.* of that part of the parish of *Weston under Penyard* lying in county of Gloucester, Burr. Rep. 2507.

21. The indictment however must be

preferred in that county wherein the ruinous part of the road lies.

Ibid. and 4 T. R. 498.

22. It is not like the case of a county bridge, one part of which cannot stand without the other, and therefore both counties shall, by *act of Parliament* be contributory.

Burr. Rep. 2507.

23. An indictment for stopping the king's highway good, though no boundaries or abuttals in the way are set forth, for a highway shall be intended to go through the kingdom. 3 Salk. 183.

24. But it seems to be otherwise where the indictment is for stopping a *private* way. 3 Salk. 183.

25. Upon an indictment for stopping a highway, the course of the Court is, that the defendant may be admitted to a fine upon his submission and a certificate of repairing, either before or after verdict, but if after verdict, there must be a *constat* to the sheriff that he may return that the way is repaired; for a verdict being a record of conviction, must be answered by matter of record.

3 Salk. 183.

26. Upon an indictment against a parish for not repairing a highway, they cannot give in evidence that another is bound to repair, but it must be specially pleaded.

R. v. *Norwich Inhab.* 1 Stra. 184.

27. But where a private person is so indicted, he may *give in evidence* that another is to repair, because he is not bound by common-right as the parish is. 3 Salk. 183.

28. Information against a hundred for not repairing a highway, the defendants pleaded *non reparare debent*, upon which they were at issue, and though it was ill, the Court would not quash it till the issue was tried, that it might be known who ought to repair; and upon the trial the jury found *quod reparare non debent*, but did not find who ought to repair, and therefore it was insisted that no judgment could be given. *Sed per. Cur.* The judgment shall be that the hundred *est acquieta*, and that those villages between whom the issue was should repair. 3 Salk. 392.

29. It is sufficient in pleading a public highway to alledge that it is a common public highway, without shewing *how* it became so, or that it has been such *time immemorial*.

Aspindall v. *Brown*, 3 T. R. 265.

30. In pleading a public highway, it is not necessary to state *any termini*.

1 H. B. 351.

31. One being indicted for not repairing a highway, *ratione tenuræ* of certain lands, parcel of a common which he had encroached, pleaded that the inhabitants of S. ought to repair it, and traversed that he ought to repair it *ratione tenuræ*, and upon a demurrer to this plea because defendant had not answered the encroachment, which was the principal matter; but held well, for that defendant being charged to repair *rat. ten.* was the chief matter to be answered, because if he had been chargeable by reason of the *encroachment*, he ought not to have been charged *rat. ten.* because where there is an encroachment the party may lay it open when he will, and then he is no longer chargeable to repair, but when the charge is *rat. ten.* he is still bound to repair although he lay it open to the highway. 3 Salk. 392.

32. Upon an indictment for not repairing a highway, if the defendant produce a certificate before the trial that the way is repaired, he shall be admitted to a fine, but after verdict such certificate will be too late, for then there must be a *constat* to the sheriff, and he ought to return that the way is repaired, because the verdict being a record must be answered by a record.

3 Salk. 393,

33. The Court would not allow a person found guilty of not repairing a road *ratione tenuræ* to submit to a small fine, without payment of the prosecutor's costs; and it was said that the reason of not usually giving costs in these cases was because stat. W. 3. directs the fine to go to the repair of the road, but that did not

extend to repairs *ratione tenuræ*, the fine in that case being to be paid to the surveyor of the parish highways.

R. v. *Wingfield*, Bl. Rep. 603.

34. If a parish, consisting of two districts which are bound to repair separately, be convicted for not repairing the road in one of the districts, the other having notice of the indictment, the Court will consider it as being substantially the conviction of the district which ought to have repaired, and, if the fine has been levied on an inhabitant of the other, will grant a special *mandamus* for a rate on the district bound to repair.

R. v. *Townshend*, *T.* 20 Geo. 3. K. B. 2 Doug. 421, 422.

35. A new trial having been moved for (after acquittal upon an indictment for not repairing a highway), upon the ground of a misdirection, it was refused, new trials being never allowed when the defendant is acquitted in a criminal case.

R. v. *Inhab. Parish of Silverton*, 1 Wils. 298. cited 2 Salk. 646 *n.*

36. Judgment against the inhabitants of part of three parishes, and writ of error of a judgment against the inhabitants of the three parishes, quashed for variance.

R. v. *Inhab. All Saints in Derby and another*, 2 Stra. 1110.

37. To an indictment against the inhabitants of a parish for non-repair of a highway within it, a plea stating that the parish was immemorially divided into seven townships, the inhabitants of which respectively were immemorially bound to repair the highways within their respective townships, and that *part* of the highway indicted was within the township of *G. B.* &c. and that the residue, &c. was within the township of *L. B.* &c., and that the respective parts ought to be repaired by the inhabitants of the respective townships, &c. is bad, without specifying *what part* of the highway lay within one township, and what part within the other.

R. v. *Bridekirk Inhab.* 11 E. R. 304.

38. An indictment charging an individual with the repair of a bridge, *by reason of his being owner and proprietor of a certain navigation*, is not equivalent to charging him *ratione tenuræ*, for it is making that a consequence of law which is not so, for a person is not by law chargeable merely as the owner of a navigation, to the repair of a bridge.

R. v. *Kerrison*, 1 Man & Sel. Rep. 435.

HOMICIDE.

I. *Petit Treason.*
II. i. *Murder.*
ii. *Appeal of Murder.*
III. *Manslaughter.*
IV. *Special Verdict.*
V. *Indictment, Evidence, and Judgment.*

I. *Petit Treason.*

1. A person indicted for petit treason and murder may be acquitted of the treason and found guilty of murder.

R. v. *Radbourne*, Leach, 512.

2. There must be two witnesses to *petit treason*, the same as to high treason.

Leach, 519.

II. i. *Murder.*

1. The killing of a man may be murder, although he had stricken the person who killed him before the mortal wound was given. A transport of passion shall never make the killing of a man manslaughter, unless it deprived the party of his reasoning faculties from the time when it was raised until the giving of the mortal wound.

R. v. *Oneby*, 2 Ld. Raym. 1485. Str. 766.

2. It lies upon the slayer to extenuate the fact of killing, which *primâ facie* is always murder. If *A.* and *B.* have a sudden quarrel, and blows pass, and then there appears a sufficient time for the parties to have cooled, and afterwards *A.* kills *B.* is a murder. Or if *A.* says he will

revenge himself of *B.* or that he will have his blood, this is express malice against *B.* and if a killing ensues it is murder.

R. v. *John Oneby*, 2 Stra. 766.
1 Ld. Raym. 1485.

3. It is murder in a gaoler or any person employed under him, to cause a prisoner's death by duress,

It is duress to put a prisoner against his will in an unwholesome room, Seeing the prisoner in such room, and permitting him to continue there, will not make a gaoler answerable for the duress, unless he knew the prisoner was there against his will.

R. v. *Huggins*, 2 Ld. Raym. 1574.
2 Stra. 882.

4. If a master, on the refusal of a servant to deliver up a key, (but which the servant afterwards offers to do), fetches his sword on such answer, strikes him therewith, and after exchanging blows gives the servant a mortal wound, query whether this be murder or only manslaughter.

R. v. *Keite*, 1 Ld. Raym. 138.
3 Salk. 191. S. C.

5. An attachment issued and signed by the county clerk in his own cause is legal process, and if the officer be resisted and killed in the execution of it, such homicide will be murder.

R. v. *Baker*, Leach, 131.

6. A magistrate who kept by him a number of *blank warrants ready signed*, on being applied to filled up one of these, and signed and delivered it to the officer, who on endeavouring to arrest the party, was killed: and the Judges were of opinion that this was murder in the prisoner killing the officer, and he was accordingly executed.

Cited by *Lord Kenyon*,
8 T. R. 455.

7. It seems doubtful whether persons can be convicted of murder, in procuring another to be executed by falsely charging him (for the sake of obtaining the reward given by act of parliament), with an highway robbery, of which it afterwards appeared he was innocent.

R. v. *M'Daniel, Berry, & Jones*, Leach, 52.

II. ii. *Appeal of Murder.*

1. A writ of appeal of murder cannot be sued out after the year and day has elaped, though a former writ sued out in time has been improperly destroyed.

R. v. *Toler*, 1 Ld. Raym. 555.
1 Salk. 176.

2. By the common law a female might have an appeal, as heir to any ancestor, as well as the male; but now by *magna charta* it is enacted, that *nullus capiatur vel imprisonetur propter appellam femina de morte alterius quam viri sui.* 3 Salk. 37.

3. And where a woman brings an appeal of the death of her husband *ne unques accouple* in loyal matrimony, is a good plea; so is a second marriage, but an elopement is not.
3 Salk. 37.

4. It lies at any time within the year and day, to be accounted from the death, and not from the stroke given; but an appeal of robbery may be brought after the year.

Gower's case, 3 Salk. 37.

5. In an appeal of felony a pursuit after appearance is peremptory, and so it is in an appeal of *maihem*, because the writ is *felonice mahemavit.*
Ibid.

6. In an appeal of murder the defendant cannot justify *se defendendo*, but must plead not guilty, and the jury shall find the special matter; but in cases not capital, as *maihem* &c. he may justify *se defendendo*, but not in defence of his goods, for if he plead not guilty he cannot give *se defendendo* in evidence. *Ibid.*

7. In an appeal the defendant having pleaded to issue, may nevertheless waive it, and demur upon the Count, for the trial would be in vain if that fail, and yet if the demurrer be adjudged against the defendant, the judgment is only to answer.

Vide Hane's case. Ibid.

8. The father, *attainted of felony*, was

slain by one who had no authority, the wife shall bring the appeal, and not the heir, for *hæres est nomen juris*, but *uxor est nomen naturæ*, and the attainder of the husband cannot extinguish that natural relation which is between man and wife, though it may that civil relation which is between ancestor and heir.
3 Salk. 37.

9. In an appeal against force by writ the defendants appeared at the return, and the plaintiff offered to declare against them as in custody, but *per Cur.* they are not in custody upon their appearance, but there must be a *committitur* or bail filed; upon which the plaintiff was called and nonsuited.
Holland's case, 3 Salk. 37.

10. An infant brought an appeal by guardian, and at the day it was proved that the guardian might not be demanded for three or four days, being sick, but *per Cur.* it was denied, and so the infant lost his appeal. *Ibid.*

11. For the same offence *auter foits acquit* is a good plea in bar to an appeal of murder.
Prince v. *Bawd*, 3 Salk. 38.

12. In an appeal of murder, neither the appellant nor the appeller can amend their plea.
Boyle v. *Pitt*, 3 Salk. 38.

13. If upon an appeal of murder brought by the widow, she declare that *O.* gave the mortal wound, and that *L.* was assisting him therein, the jury find that *L.* gave the wound and that *O.* was assisting, held well enough, the same as upon an indictment where such a finding would be good.
Bauson v. *Offley*, 3 Salk. 38.

14. If a wound be given in one county and the party die in another, the appeal shall be tried in the county where the *death happened*, and not by a jury of both counties.
Bauson v. *Offley*, 3 Salk. 39.

15. An appellee bailed, having been acquitted upon the indictment for murder.
Castell, wid. v. *Bambridge and Corbet*, 2 Stra. 854.

16. But not if convicted upon the indictment, though pardoned afterwards upon the report of the Judge.
Pyle v. *Grant*, 2 Stra. 858.

17. Defendant being indicted of murder, was found guilty of manslaughter at the assizes, and an appeal was immediately lodged; the Judge gave the appellee time to plead till the next assizes, but in the mean time the appellant brought a habeas and certificate to remove both the body and record into B. R. and afterwards the party agreed, and the appellee being bailed, he appeared in court upon his recognisance, and produced a release from appellants and moved to be discharged, there being counsel from the appellant consenting thereto. Sed *per Cur.* The Court will be possessed of the record before he is discharged, therefore let the habeas and certificate be returned, and the return filed when the appellee must be arraigned, and afterwards he may plead this release; but if the appellant is not ready at the return of the certificate to arraign his appeal, or does not appear in person, the appellee may have a *sci. fa.* to compel him, and if he does not come in upon the return of such *sci. fa.* he shall be demanded and non-suit. But the appellee is not yet to be discharged, because there is a record against him in Court, and therefore he must be arraigned, and then he may plead *auter foits acquit*, &c.
Culliford's case, 3 Salk. 39.

18. A defendant having been convicted of manslaughter, and had his clergy, it was allowed as a good plea in bar to an indictment for murder.
Smith, Wid. v. *Taylor*, Burr. Rep. 2799. See *Hoyle* v. *Pitt*, 3 Salk. 38.

19. A plea by an attorney to an appeal of murder ought not to be received, but if it is, and an adjournment be had, that will be a discontinuance of the cause.
Orbet v. *Ward*, Salk. 58.

20. *Nul tiel parish* is a good plea to an appeal of murder. *Ibid.*

21. Upon an appeal of murder ap-

pellant must count in person; he cannot do it by attorney.
Loder's case, Salk. 63.

22. For if he do it will be a discontinuance, unless he be present in court himself. Salk. 63.

23. Upon proceedings upon an appeal of murder, a return of *attachiari feci* by the sheriff to the writ commanding him, *quod attach. Johan Law*, &c. held good.
Wilson v. *Law*, 2 Salk. 589.

24. Various proceedings detailed in appeals of murder:—
Castell v. *Bainbridge and Corbet*, 2 Stra. 854.
R. v. *Taylor*, Burr. Rep. 2793.
Smith, wid. v. *Taylor*, *Ibid.*
Armstrong v. *Lisle*, 1 Salk. 60. 1 Ld. Raym. 671.
Wilson v. *Laws*, 1 Ld. Raym. 20. 1 Salk. 59. 3 Salk. 379.
Bigley v. *Kennedy*, 2 Bl. Rep. 710. 3 Salk. 39. Salk. 382.
Smith v. *Bowan*, 2 Lord Raym. 1288.
R. v. *Keate*, 1 Salk. 103.
Hoyle v. *Pitt*, 3 Salk. 38.

III. *Manslaughter.*

1. Where the deceased had suffered some sheep he was attending to escape, and his master took up a stake that was lying on the ground and threw it at the boy, which hit him on the head, of which he died, held to be manslaughter only.
R. v. *Wiggs*, Leach, 420 *n.*

2. Qu. Whether if a mother-in-law, on perceiving a fault committed by her daughter-in-law in some work she was doing, throw a child's stool at her and kill her, and then conceal the death and hide the body, it is murder or manslaughter.
R. v. *Hazell*, Leach, 406.

3. If an officer on the impress service fire in the *usual manner* at the *haul yards* of a boat in order *to bring her to*, and kill a man, it is only manslaughter.
R. v. *Phillips*, Cowp. 830.

4. A person came to town in a chaise, and before he got out of it fired his pistols, which by accident killed a woman, ruled to be only manslaughter.
R. v. *Burton*. Stra. 481.

5. A quarrel having ensued between several soldiers and a number of keelmen, one of the soldiers, to protect himself and his comrades from the assault of the mob, drew his sword, and mistaking one of the persons passing by for one of the keelmen, struck him on the head with his sword, of which blow he died, held to be only manslaughter.
R. v. *Brown*, Leach, 176.

6. *A.* and *B.* suddenly quarrel; upon some provoking language *B.* seizes *A.* by the collar, a fight ensues, they both fall to the ground, and while struggling on the ground, *B.* receives a mortal wound from a knife which *A.* held in his hand, held to be manslaughter only.
R. v. *Show*, Leach, 180.

7. It is a sufficient provocation to make the killing of a man to be manslaughter only, that he is assisting in unlawfully imprisoning a third person.
R. v. *Tooley & al.* Ld. Raym. 1296.

8. Though the person imprisoned be a stranger to the person killing, and the slayer did not know that the detention was unlawful, and though the deceased said he was acting as a peace officer. *Ibid.*

IV. *Special Verdict.*

1. If a gaoler confines his prisoner against his will in an unwholesome room, without allowing him the necessaries of a chamber pot, &c. whereby he contracts a distemper by which he dies, this is murder by duress in the party doing it. But if the verdict finds only that the principal knew the condition of the room for fifteen days before the death of the deceased, and that he was, within that time, once present, "and saw the deceased under the "duress of the said imprisonment, "and turned away," sufficient facts are not found to amount to murder in him.
R. v. *Huggins*, 2 Stra. 882.

2. In criminal cases the principal is not answerable for the acts of his

deputy. The accidental presence of the principal does not revoke the power of his deputy; he must also have an intention of executing the the office. *Ibid.*

3. On a special verdict, principals in the second degree cannot be affected unless the jury find expressly that they were actually present, or that some acts were done by them which unavoidably shew that they were present, or that they were of the same party, on the same pursuit, and under engagements and expectations of mutual defence and support from the person who did the fact.
R. v. *Borthwick & al.* 1 Doug. 207.

V. *Indictment, Evidence and Judgment.*

1. An indictment for murder which only states that the prisoner did grievously lacerate and wound the private parts and inside of the body of the deceased, of which said lacerations and bruises so given by the said W. L. in manner aforesaid, she, the said deceased, on and until &c. languished and then died, but had omitted to aver, "thereby giving the said deceased one mortal wound or bruise," &c. is bad for such omission.
R. v. *Lad*, Leach, 112.

2. The indictment stated that the child was of tender years, being about the age of *nine* years, but one of the Judges thought that it ought to have been positively averred that the girl was *under ten years of age*, as this means of death could not well be thought murder if she was above that age, and voluntarily consented to the ravishment. *Ibid.*

3. An indictment on the statute of stabbing must follow the words of that statute, and state that the deceased had not *a weapon drawn*, for to say not having *first* struck is insufficient, for if the prisoner kill the deceased *after* he had a weapon drawn, he would be out of the statute.
R. v. *Keete*, 1 Ld. Raym. 138.

4. Qu. Whether a man can be found guilty on that statute if the deceased had struck him, (with a scythe); before the mortal wound was given, and whether the statute does not, by the *first* stroke, intend any stroke before the *mortal* wound is given. *Ibid.*

5. If *A.* and *B.* be indicted for murder, and the indictment charge that *A.* fired the shot and *B.* was present, aiding and assisting; if it turn out in evidence that the shot was in fact fired by *B.*, *A.* may be acquitted and *B.* found guilty of the murder.
R. v. *Taylor and Shaw*, Leach, 398. 1 Doug. 207 *n.* S. P.

6. If several make a riot and a man is killed by one, but it is not known by which of the rioters, they are all guilty of murder.
R. v. *Wallis*, 1 Salk. 334.

7. If one person be charged with the murder of *A.* and divers others with being present, aiding and abetting him, though *A.* be acquitted, the others may be found guilty, for who committed the murder is but a circumstance, as all were principals.
R. v. *Wallis*, 1 Salk. 334.

8. Where upon an indictment for murder, (by beating with a piece of wood, and also by throwing overboard and drowning), on the high seas, the evidence was that the prisoner had proposed to one of the crew to kill the captain, and one witness proved, that being alarmed in the night, he went upon deck and observed the prisoner take the captain up and throw him overboard into the sea, and that he was not seen or heard of afterwards, and that near the place on the deck where the captain was seen another witness found a billet of wood, and that the deck and part of the prisoner's dress were stained with blood. The Court, upon an objection that the actual fact of the death was not proved, and that as there were many vessels near the place where the transaction took place, the captain might have been taken up by some of them alive, the Court left it to the Jury to say whether the deceased was not killed before his body was thrown into the sea, and they found

so accordingly, and the prisoner was convicted and executed.

R. v. *Hindmarsh*, Leach, 648.

9. Upon an indictment for murdering an apprentice by famine and harsh treatment, it seems the better opinion that the offence cannot be lessened to manslaughter, for it is either murder or nothing at all.

R. v. *Self*, Leach, 163.

10. Persons present, aiding and abetting in an illegal act, are not guilty of murder committed by one of the party, (but by which was uncertain), unless it be done in the prosecution of such illegal act.

R. v. *Hodgson & al.* Leach, 7. See Fost. 353.

11. A person convicted of manslaughter was burnt in the hand behind the bar, in the face of the Court.

R. v. *Taylor*, Burr. Rep. 2797.

12. The bodies of condemned murderers are, by the common law at the disposal of the king, who alone has the power of ordering them to be hanged in chains, but power for that purpose is now given to the Judges by the act, 25 G. 2. c. 37.

R. v. *Hall*, Leach, 25.

13. Qu. If the stroke be given upon the high seas, and the deceased die in Ireland, where is the trial to be?

R. v. *Farrel*, Bl. Rep. 459.

14. It is no objection in murder or any other capital case, that there is no joinder in issue for want of a *similiter*, the precedents in all capital cases being in that manner.

R. v. *Oneby*, 2 Stra. 774.

HOUSEBREAKING.

The stat. 3 & 4 W. & M. c. 9. takes away the benefit of clergy from persons aiding and abetting housebreakers, under 39 Eliz. c. 15.

R. v. *Mouncer & al.* Leach, 645.

IMPARLANCE.

1. When the venue is in Middlesex, the party has time to plead during the whole term in which he is charged with an information; but if it be laid in another county, the party shall have time to plead till the *next* term.

Anon, 2 Salk. 514.

2. In an information, if the defendant comes in upon the first process he has an imparlance of course, but if upon the attachment he must plead *instanter*.

Anon. 1 Salk. 367. *R.* v. *Rawlins*, 3 Salk. 184. S. P. & S. C.

3. An imparlance is a reasonable time to advise, and there have been imparlances from one return day to another, but now they are always from one term to another.

R. v. *Rawlins*, 1 Salk. 367.

4. It seems reasonable that the defendant should have the same time upon appearing upon recognizance as if he had stood out or come in upon an attachment or *capias*, *i. e.* the same time that the length of the process would take up and no more, for when he had come in upon that he must have pleaded *instanter*.

Ibid.

INDICTMENT.

I. *What are indictable Offences.*
II. *Form of Indictment.*
III. *Finding of the Grand Jury.*
IV. *Striking out Counts.*
V. *Copy of the Indictment.*
VI. *Pleas and Evidence.*
VII. *Form of the Caption.*
VIII. *Variance between Indictment and Evidence.*
IX. *Quashing Indictments.*
X. *Procedendo and Nolle Prosequi.*
XI. *Judgment.*
XII. *Arrest of Judgment.*

I. *What are indictable Offences.*

1. Taking up dead bodies, though for the purposes of dissection is indictable as a misdemeanor, being

cognizable by a criminal court, as highly indecent and *contra bonos mores*.

R. v. *Lynn*, Leach, 561. 2 T. R. 733.

2. It is a misdemeanor and indictable to bury a dead body before or without sending for the coroner.

R. v. *Clerk*, 1 Salk. 377.

3. It is indictable for several persons to conspire together to prevent the burial of a corpse.

R. v. *Young & al.* cited 2 T. R. 734.

4. Where a statute prohibits the doing of a thing the doing it wilfully is indictable, although without any corrupt motive. 4 T. R. 457.

5. And it is an offence at *common law* to obstruct the execution of powers granted by statute.

R. v. *Smith & al.* Dougl. 441.

6. An indictment for such an offence should not conclude "*against the form of the statute.*"

7. Although the Court seemed to be of opinion, that an offence newly created by a statute which imposes a forfeiture for it and points out a mode for recovering such forfeiture, an indictment will not lie, yet they refused to quash the indictment on motion. *R.* v. *Savage & al.* 1 Ld. Raym. 347.

8. Where an offence is newly created by a statute which imposes a forfeiture for it and points out the mode of recovering it, an indictment will not lie.

R. v. *Douse*, 1 Ld. Raym. 672.

9. Where a new offence is created by an act, and a penalty annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may indict on the prior clause as for a misdemeanor.

R. v. *Harris*, 4 T. R. 202.

10. A person may be indicted for what was an offence at common law, notwithstanding a statute may inflict new penalties upon it, and prescribe another mode of proceeding for such penalty.

R. v. *Wigg*, Ld. Raym. 1163. 2 Salk. 460.

11. A mere act of trespass (such as entering a yard, and digging the ground, and erecting a shed or cutting a stable &c.), committed by *one person*, unaccompanied by any circumstances constituting a breach of the peace, is not indictable, and the Court quashed such indictment on motion.

R. v. *Storr*, Burr. Rep. 1699.

12. But where the indictment stated the entering a dwelling house, *and vi et armis and with strong hand* turning out the prosecutor, the Court refused to quash it.

R. v. *Storr*, Burr. Rep. 1699.

R. v. *Gillett*, Burr. Rep. 1707.

13. But an indictment against one person for *pulling off the thatch of a man's house*, he being in the peaceable possession, was quashed on motion.

R. v. *Atkins*, Burr. Rep. 1706.

14. An indictment will lie for taking goods forcibly, but then such taking must be proved to be a breach of the peace. *Anon.* 3 Salk. 187.

15. And though such goods are the prosecutor's own property, yet if he take them in that manner he will be guilty. *Ibid.*

16. The Court refused to quash an indictment against a defendant for not performing *statute labour* on the highway, for although there is a summary mode of punishment given by statute 22 Car. 2. by fine, yet it was an offence indictable before the appointment of that summary remedy; therefore the summary jurisdiction is *cumulative*, (although there is another remedy given), and does not exclude the common law remedy.

R. v. *Boyall*, Burr. Rep. 832.

17. Where an offence is not so at common law, but made an offence by statute, yet an indictment will lie where there is a substantive prohibiting clause in such statute, *ibid.* (though there be afterwards a particular provision and a particular remedy given), but it is otherwise where the act is *not prohibitory*, but *only* inflicts the forfeiture and specifies the remedy. Burr. Rep. 804.

18. And there is a settled distinction between a substantive independent clause and a prohibition *sub modo*.
Ibid.

19. Where a statute makes *a new* offence, and prescribes a particular mode of proceeding, an indictment will not lie.
R. v. *Wright*, Burr. Rep. 543.

20. Indictment for killing a hare quashed it not being indictable, the statute 5 Ann. c. 14. having appointed a summary proceeding before justices.
R. v. *Buck*, Stra. 678.

21. To publish a scandalous petition presented to the House of Lords, or a scandalous affidavit made in a court of justice, is an indictable offence.
R. v. *Salisbury*, 1 Ld. Raym. 341.

22. It is not indictable to say of a justice of the peace in discourse, concerning a warrant made by him, Sir G. B. *is a fool, an ape, and a coxcomb, for making such a warrant, and he knows no more than a stickbill.*
R. v. *Wrightson*, 2 Salk. 698.

23. It is not an indictable offence to keep a tippling house without license, because the statute provides a particular punishment, namely, that the party be committed by two justices.
Anon. 3 Salk. 25.

24. Same point.
Watson's case, 1 Salk. 45. and *R.* v. *Edwards*, 3 Salk. 27.

25. Where two sets of magistrates have a concurrent jurisdiction, and one appoints a meeting to grant ale licenses, their jurisdiction attaches so as to exclude the other appointing a subsequent meeting, though they may all meet together the first day; and if, after such appointment, the other set of magistrates meet on a subsequent day and grant other licenses, their proceeding is illegal and the subject of an indictment.
R. v. *Sainsbury*, 4 T. R. 451.

26. An indictment does not lie for saying of a Mr. Martin, a justice of the peace, "I did not care if all the Martins had been hanged five years ago, and the justice is now turned out of his commission."
R. v. *Penny*, 1 Ld. Raym. 153.

27. It is an indictable offence to say of a justice of the peace, in the execution of his office, "you are a rogue and a liar."
R. v. *Revel*, Stra. 420.

28. And for such words spoken in the presence of a justice, he may commit the party; but when behind his back, the party may be indicted for a breach of the peace. *Ibid.*

29. But the Court refused to grant an information against a person who in a conversation about a warrant granted by a justice, said the justice was a rogue and a foresworn rogue, for it is not the same insult and contempt as if spoken to him in the execution of his office, which would make it a matter indictable.
R. v. *Pocock*, Stra. 1157.

30. It is not indictable to tell the mayor of a town you do not care for him, or that he is a rogue and rascal.
R. v. *Langley*, Ld. Raym. 1029. 1 Salk. 697. 3 Salk. 190.

31. But if the mayor had been in the execution of his office, he might have committed defendant.

32. It is not an indictable offence to exercise a trade in a borough contrary to the bye laws of that borough.
R. v. *J. Sharpless*, 4 T. R. 777.

33. The voluntary absence of a chief officer of a corporation upon the charter day of election of his successor, is not indictable upon the stat. 11 G. 1. c. 4. s. 6. unless his presence as such chief officer be *necessary* by the constitution of the corporation, to constitute a legal corporate assembly for such purpose.
R. v. *Corry*, 5 E. R. 372.

34. Where a duty is thrown on a body consisting of several persons, each is individually liable for a breach of duty, as well for acts of commission as of omission. 5 T. R. 607.

35. A mere false assertion, unaccompanied by a recommendation, is not indictable. 6 T. R. 565.

36. Indictment lies against one who was clerk to the agent for French prisoners of war, for taking bribes

in order to procure the exchange of some of them out of turn.

R. v. *Beale*, E. 38 G. 3.

Cited 1 E. R. 183.

37. Public officers may be indicted for enabling accountants with the pay-office to pass false accounts in fraud of the revenue.

R. v. *Bembridge & al.* 6 E. R. 136.

38. It is an indictable offence, together with two others to procure a person to be arrested by a justice's warrant, and persuading the magistrate to refuse good bail which was offered, and to commit the party apprehended, and persuading the gaoler to lay such party in irons, whereby the gaoler extorted money from him.

R. v. *Tracy*, 3 Salk. 192.

39. This was probably determined upon the ground of its being a *conspiracy*. *(Editor.)*

40. It is not an indictable offence to say of a man, that he made an assault on P. T. and had actually known her without her consent, with intent to procure money of the prosecutor.

R. v. *Cave*, Ld. Raym. 857.

41. Indictment "that defendant intending to defraud the king, and unjustly to procure a payment to be made as to the widow of an officer, did knowingly publish a certain false and counterfeit affidavit purporting to have been sworn to by one E. R. before T. E. esq. a justice of the peace, by which means he received (a sum of money) of the paymaster of the king's bounty," laid as an offence at common law, is good, though not laid to be forged by the defendant.

R. v. *Obrian*, Stra. 1144.

42. And the Court said that since *Ward's case* this could never be doubted, and that it was in the election of the party in the case of forging deeds to lay the indictment either at common law or upon the stat. 5 Eliz. c. 14. which it is observable has the word *writings* in contradistinction to deeds. *Ibid.*

43. It is not an indictable offence to assault and beat a custom-house officer, because the stat. 13 & 14 Car. 2. c. 11. s. 16. has appointed a particular mode of punishment for it. 2 Ld. Raym. 991.

Anon. 3 Salk. 189.

44. If a *pilot* disobey the orders of the Privy Council made pursuant to the provisions of 26 G. 2. c. 6. s. 1. with respect to the performance of quarantine, he may be punished at common law by information, notwithstanding the 5th section of the act, which relates entirely to the *captain, seamen and passengers*, on board such ship, and does not reach the case of a pilot.

R. v. *Harris*, Leach, 622.

4 T. R. 202.

45. The statute 26 G. 2. c. 6. s. 1. enacts that all persons going on board ships coming from infected places shall obey such orders as the king in council shall make, without annexing any particular punishment; the disobedience of such an order is an indictable offence, and punishable as a misdemeanor at common law. 4 T. R. 202.

46. Though the statute 12 G. 1. c. 25. imposes a penalty of 20*s.* per thousand for burning place bricks and stock bricks together, and there is no appropriation of it, nor any method prescribed in the act how it shall be recovered, yet in the Court of King's Bench held it could not be recovered by indictment, but was suable for in a court of revenue only.

R. v. *Mallard*, Stra. 827.

47. Where a statute directs that a forfeiture shall be recovered by action of debt or information, an indictment does not lie.

Glass's case, 3 Salk. 350.

48. An indictment may be preferred at the suit of the queen on 31 Eliz. c. 5. s. 5. at any time within three years after the offence committed.

R. v. *Franklyn*, Ld. Raym. 1038.

49. Where a statute has made an offence which was before only a misdemeanor a felony, an indictment will not lie for it as a misdemeanor.

R. v. *Cross*, 1 Ld. Raym. 711.

3 Salk. 193.

50. The owner of houses in St. Ca-

tharine's, the rooms of which were let out to several families, held not to be liable to the penalties of 31 Eliz. c. 7. for the house is not a cottage, and all new buildings about town would be liable to the same prosecution, there not being four acres laid to any of them.

R. v. *Pattle*, Stra. 404.

51. Held also that the proviso in the stat. for market towns would take in the above case, for as far as the houses are contiguous, Wapping is part of the town. *Ibid.*

52. An indictment for selling beer by false measure need not shew *to whom* it was sold, for the informer may not know the name of the person.

R. v. *Gibbs*, Stra. 496.

53. An indictment for selling *divers quantities* of beer by false measure, is bad for the uncertainty.

R. v. *Gibbs*, Stra. 496.

54. It is not indictable that defendant came to prosecutor and pretended to be sent to him by T. G. to receive money for his use, unless there is a false token.

R. v. *Jones*, Ld. Raym. 1013.
1 Salk. 379.

55. Indictment against defendant for that she, intending to deprive prosecutor of divers sums of money, did falsely and maliciously accuse him of robbing her, adjudged ill.

R. v. *Stonehouse*, 3 Salk. 188.

56. Upon an indictment for throwing down skins into a man's yard, which was a public way, by which another man's eye was beat out, it appearing in evidence that the wind took the skin and blew it out of the way, and so the damage happened, the defendant was acquitted.

R. v. *Gill & al.* Stra. 190.

57. It is an indictable offence to disobey an order of sessions made for the maintenance of the defendant's grandchildren.

R. v. *Robinson*, (Clk.)
Burr. Rep. 800.

58. For such an offence was one at common law, before the passing of the statute 43 Eliz. c. 2.

59. And an indictment for disobeying an order of justices must shew explicitly that an order was made. It is not sufficient to state the order by way of *recital.*

R. v. *Crowhurst*, Ld. Raym. 1363.

60. A person is indictable for disobeying an order of justices to widen an highway *ratione tenuræ*, for the act 13 G. 3. c. 78. extends to *such* highways.

R. v. *Balme & al.* Cowp. 648.

61. It is an indictable offence to refuse to provide for a poor boy placed apprentice to defendant pursuant to the statute.

R. v. *Gould*, 1 Salk, 381.

62. And so for *not receiving* or *turning off.* *Ibid.*

63. And in such an indictment it is not necessary to lay the offence with a *vi et armis*, but if it be so laid these words may be rejected as surplusage. *Ibid.*

64. Qu. Whether an indictment will lie against overseers of the poor for refusing to account, for another remedy is provided by the statute.

R. v. *Hemmings and Ghent*,
3 Salk. 187.

65. Held not to be an indictable offence for a constable who had seized money suspected to be clipped, to refuse to deliver it to a justice of the peace.

R. v. *Hall*, 3 Salk. 188.

But qu. if this case be law.

66. It is an indictable offence in a constable after he has been duly chosen, to refuse to execute the office.

R. v. *Lone*, Stra. 920.

67. It is an indictable offence in a constable to discharge and suffer to escape a person committed to his custody by a watchman as a loose and disorderly woman and a street walker.

R. v. *Bootie*, Burr. Rep. 865.

68. And in such an indictment it is not necessary to charge that the defendant knew the woman to be a street walker. *Ibid.*

69. A corporation has no power of common right to elect a constable, and therefore an indictment for refusing to serve that office on being

thereto elected by a corporation, must set forth the prescription of the corporation so to do, or it is bad.

R. v. *Bernard*, 2 Salk. 52.
1 Ld. Raym. 94.

70. If a pawnbroker refuses upon tender of the money to deliver the goods pledged, he may be indicted.

Anon. 2 Salk. 522. But contra, *R.* v. *Jones*, 1 Salk. 379.

71. A mayor of a city, being a justice, made an order that a company in the city should admit one to be a freeman of that corporation, and the master of the company being served with the order refused to obey it, and for this was indicted; but *per Cur.* it is not indictable, for it is only a non-feasance and a particular wrong done to another.

R. v. *Atkinson*, 3 Salk. 188.

72. Nor is it indictable to keep an open shop in a city not being free thereof, contrary to the immemoral custom there.

R. v. *Gorge*, 3 Salk. 188.

73. Nor to refuse to obey an order of a justice of the peace to pay wages for work done.

R. v. *Brown*, 3 Salk. 189.

74. Indictment for words spoke with intent to prejudice the market of B. and hinder the town of toll, viz. "*I have got a judgment against the town, for that we shall not pay for standing, and they are fools that pay,*" quashed, and the Court said the Recorder of the town ought to be fined for it.

R. v. *Harwood*, 1 Salk. 370.

75. A person may be indicted for refusing to take upon himself the office of overseer of the poor, after being duly appointed.

R. v. *Jones*, Stra. 1145.

76. An indictment will not lie for not curing a person of a disease, according to promise, for it is not a public offence and no more in effect than an action on the case.

R. v. *Bradford*, 1 Ld. Raym. 366.
3 Salk. 189.

77. An indictment for taking a bastard child born out of the parish of A. and bringing it into another parish, and there keeping it privately without notice to the churchwardens, and with intent to charge that parish, quashed, because it appeared the parish could not be burdened, the bastard being born out of the parish of A.

R. v. *Warne*, Stra. 644.

78. An indictment for conspiring to marry a poor person settled in A. to a person settled in B. in order to bring a charge on the parish of B. quashed on demurrer, being said not to be an indictable offence.

R. v. *Edwards*, Stra. 707.

79. But this decision appears not to be law. See *R.* v. *Tarrant*,
Burr. Rep. 2106.

80. An indictment does not lie against a person for entertaining idle and vagrant persons in his house.

R. v. *Langley*, 1 Ld. Raym. 790.

81. And if it did, it ought to state that the persons were vagrants at the time they were so entertained.
Ibid.

82. On demurrer to an indictment for secreting a woman big with an illegitimate child, so that she could not be had to give her evidence about the father, judgment was given for defendant, for the child cannot be illegitimate before born, there being always a probability that it may be born in lawful wedlock.

R. v. *Chandler*, Stra. 611.
Ld. Raym. 1368.

83. It is not an indictable offence to keep a house and therein to receive women with child and deliver them.

R. v. *M'Donald*, Burr. Rep. 1646.

84. Any person making or knowingly using a false affidavit taken abroad, (though a forging could not be assignable on it here), in order to mislead our own courts and to prevent public justice, is punishable by indictment for a misdemeanor.

Omealy v. *Newell*, 8 E. R. 364.

85. It is not an indictable offence to set place and keep a person on the public footway in a city for several hours together on several days, to distribute and deliver out hand bills to the passengers, whereby such footway was greatly impeded and obstructed, so that persons there pass-

ing and residing could not freely go, pass &c. as they ought and were wont to do, &c.

R. v. *Sarmon*, Burr. Rep. 516.

86 *Knowingly exposing to sale* and *selling* wrought gold, *under* the *sterling* alloy, and as for gold of the *true standard* weight, which is indictable in goldsmiths, is not so in another person.

R. v. *Bower*, Cowp. 323.

87. The following were declared to be offences at common law, and not done away by the repeal of the statute 5 & 6 Ed. 6. c. 14.

88. Spreading rumours with intent to enhance the price of hops, in the hearing of hop-planters, dealers and others, that the stock of hops was nearly exhausted, and that there would be a scarcity of hops &c. with intent to induce them not to bring their hops to market for sale for a long time, and thereby greatly to hance the price.

R. v. *Waddington*, 1 E. R. 143.

89. Spreading such rumours generally, with intent to enhance the price of hops. *Ibid.*

90. Endeavouring to enhance the price by persuading divers dealers &c. not to take their hops to market, and to abstain from selling for a long time. *Ibid.* 144.

91. Engrossing large quantities of hops, by buying from many particular persons by name, certain quantities, with intent to resell the same for an unreasonable profit, and thereby to enhance the price. *Ibid.*

92. *Ad idem*, stating the particular contracts. *Ibid.*

93. Getting into his hands large quantities, by contracting with various persons for the purchase, with intent to prevent the same being brought to market, and to re-sell at an unreasonable profit, and thereby greatly to enhance the price. *Ibid.*

94. Buying large quantities with like intent. *Ibid.* 145 & 168.

95. Buying large quantities with intent to re-sell at exorbitant profit, &c. *Ibid.* 145 & 168.

96. Unlawfully engrossing, by buying large quantities with like intent. *Ibid.*

97. Engrossing hops of divers persons by name, with an intent to re-sell at an unreasonable profit, and thereby enhance the price.

R. v. *Waddington*, 1 E. R. 167.

98. Engrossing hops then growing, by forehand bargains, with like intent. *Ibid.*

99. Buying all the growth of hops in several parishes by forehand bargains, with like intent. *Ibid.* 168.

100. Buying all the growth of hops on certain lands in certain parishes, by forehand bargains, with intent to sell at an unreasonable price, and to enhance the price. *Ibid.*

101. Engrossing, by buying large quantities of persons unknown, with intent to re-sell at an exorbitant price, &c. *Ibid.* 169.

102. Buying hops then growing, with intent to re-sell at an exorbitant price and lucre. *Ibid.*

103. To forestall any commodity which is become a common victual and necessary of life, or used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law. *Ibid.*

104. It seems that persons putting on board a ship an unknown article of a combustible and dangerous nature, without giving due notice of its contents, so as to enable the master to use proper precautions in the stowing of it, is guilty of a misdemeanor.

Williams v. *The East India Company*, 3 E. R. 201.

105. Threatening by letter or otherwise to put in motion a prosecution by a public officer, to recover penalties for selling Fryar's Balsam, without a stamp (which by stat. 42 G. 3. c. 36. is prohibited to be vended without a stamped label), for the purpose of obtaining money to stay the prosecution, is not such a threat as a firm and prudent man may not be expected to resist, and therefore is not in itself an indictable offence

at common law, although it be alledged that the money was obtained; no reference being made to any statute which prohibits such attempt.
R. v. *Southerton*, 6 E. R. 126.

106. But it seems that such an offence is indictable upon the statute 18 Eliz. c. 5. s. 4. for regulating common informers, which prohibits the taking of money, without consent of court, under colour of process, or without process, from any person, upon pretence of any offence against a penal law. *Ibid.*

107. But no indictment for any attempt to commit such a statutable misdemeanor can be sustained as a misdemeanor at common law, without at least bringing the offence intended within and laying it to be against the statute. *Ibid.*

108. Though if the party so threatened had been alledged to be guilty of the offence imputed, within the statute imposing the duty and creating the penalty, such an attempt to compound and stifle a public prosecution for the sake of private lucre, in fraud of the revenue, and against the policy of the statute, which gives the penalty as auxiliary to the revenue and in furtherance of public justice, for example sake might also, upon general principles, have been deemed a sufficient ground to sustain the indictment at common law. *Ibid.*

109. Mixing alum with bread, in such manner as that round lumps of it were found in the loaves, is an indictable offence. *R.* v. *Dixon*, 3 Man. & Sel. Rep. 11.

110. Especially as the statute 36 G. 3. c. 22. s. 3. has interdicted the use of that ingredient in the making of bread. *Ibid.*

111. It is an indictable offence for several persons to conspire on a particular day, by false rumours, to raise the price of the public government funds, with intent to injure the persons who should purchase on that day.
R. v. *De Berenger & al.* 3 Man. & Sel. Rep. 6.

112. And such an indictment is well enough without specifying the particular persons who did purchase to be the persons intended to be injured; and held, that the public government funds of this kingdom might mean either British or Irish funds, which since the Union were each a part of the funds of the united kingdom. *Ibid.*

113. A great number of persons at Birmingham, (2,500), admitting of an extent to 20,000, covenanted by a deed of copartnership to raise a large capital, (£20,000), by small subscriptions of £1 for each share, for the purpose of buying corn, grinding it, making bread, and dealing in and distributing flour or bread amongst the partners, under the name and firm of the *Birmingham Flour and Bread* Company, and under the management of a committee; and covenanted that no partner should hold more than twenty shares, unless the same should come to him by marriage, &c. or by act of law; and that each member should weekly purchase of the copartnership a certain quantity of bread or flour, not exceeding one shilling in value for each share, as the committee should appoint; and that no partner should assign his share, unless the assignee should enter into covenant with the other partners for the performance of all covenants in the original deed; and that the majority of partners at a public meeting, might make bye laws to bind the whole:

Upon an indictment against several of the parties, charging them upon the statute 6 G. 1. c. 18. s. 18. & 19. as for a public nuisance, with intending to prejudice and aggrieve divers of the king's subjects in their trade and commerce, under false pretences of the public good, by subscribing, collecting and raising, and also by *making subscriptions* towards raising a large sum for establishing a new and unlawful *undertaking, tending to the common grievance* &c. of great numbers of the king's subjects in their trade and commerce, *i. e.* making subscription towards raising

20,000*l.* in 20,000 shares for the purpose of buying corn, and grinding and making it into flour and bread, and dealing in and distributing the same; and also in the presuming to act *as a corporate body* and pretending *to raise* a *transferable and assignable stock* for the same purposes:

The jury having found specially that the company was originally (during the high price of provisions) instituted from *laudable motives, and for the purpose of more regularly supplying the town of B. and the neighbourhood with flour and bread*, and that the same *was originally and still is beneficial to the inhabitants at large*, but *is* (i. e. at the time of finding the special verdict, which does not include the time of the offence charged in the indictment,) prejudicial to the bakers and millers of the town and neighbourhood in their trades.

The Court gave judgment for *the defendants*, considering the case not to be within the statute on which the indictment was framed.

R. v. *Webb et al.* 14 E. R. 406.

II. *Form of Indictment.*

1. If in the statement of any offence by statute there be any description in the negative, the affirmative of which would be an excuse for the defendant, it need not be set out in the indictment. 5 T. R. 83.

2. Every indictment must contain a complete description of such facts and circumstances as constitute the crime, without inconsistency or repugnancy; but except in certain cases where technical expressions having grown by long use into law are required to be used, the same sense is to be put on the words of an indictment which they bear in ordinary acceptation; and if the sense of any word be in ordinary acceptation ambiguous, it shall be construed according as the context and subject matter require it to be, in order to make the whole consistent and sensible: The word *until* may therefore be construed either exclusive or inclusive of the day to which it is applied, according to the context and subject matter.

R. v. *Stevens & Agnew*, 5 E. R. 244.

3. Therefore, where an information on the stat. 33 G. 3. c. 52. s. 62. prohibiting *officers* of the *East India* Company, *residing* in India, from receiving presents, charged, that the defendants being *British subjects* on the 1st *January*, 1794, and from thence for a long time, to wit, *until* the 29th *November*, 1795, held certain offices under the company, and *during all that time resided in the* East Indies: and that *whilst* they held the said offices *as aforesaid*, and *whilst they resided in the* East Indies *as aforesaid*, to wit, *on the 29th of* November, 1795, they received certain presents: held that the context shewed that the word *until* was to be taken *inclusive* of the 29th *November*, 1795. *Ib.*

4. But that if it had been incapable of receiving an *inclusive* construction, the words under the first videlicet, "*until the 29th of November*, 1795," could not have been rejected as surplusage; for that can never be where the allegation is sensible and consistent in the place where it occurs, and not repugnant to *antecedent* matter, though laid under a *videlicet*, and however inconsistent with an allegation *subsequent*. *Ib.*

5. Where an evil intent accompanying an act, is necessary to constitute such act a crime, the intent must be alledged in the indictment and proved; though it be sufficient to alledge it in the prefatory part of the indictment. But where the act is in itself unlawful, the proofs of justification or excuse lies on the defendant, and on failure thereof the law implies a criminal intent.

R. v. *Phillips*, 6 E. R. 464.

6. Time and place must be added to every material act in an indictment. 5 T. R. 607.

7. Some day must be alledged in the indictment on which the offence was

committed, but it is not material that it should be proved on that day.
Charnock's case, 1 Salk. 287.

8. Upon a demurrer to an indictment found in an inferior court, objection may be taken as well to the *jurisdiction* of such court as to the subject matter of the indictment.
R. v. *Fearnley*, 1 T. R. 316.

9. Stating the defendant to be late of W. and laying the offence to be at *the parish aforesaid*, was held not to sufficiently certain 5 T. R. 162.

10. An indictment for an assault describing the defendant as "late of A. in the county of B." without stating that A. was a *parish*, is bad, although the offence is laid to have been committed at the parish aforesaid, in the county aforesaid; for some certain *venue* must appear on the face of the record, and here the offence is laid *at the parish* aforesaid, and no parish is before mentioned.
R. v. *Mathews*, Leach, 664.

11. An indictment on the stat. 23 G. 3. c. 13. for enticing artificers to go out of the kingdom &c. alledged that the defendant contracted with the manufacturer &c. "to go out of this kingdom of *Great Britain* into a foreign country called *America*, such foreign country not being then within the dominion of or belonging to the crown of *Great Britain*:" and held good after verdict.
R. v. *Myddleton*, 6 T. R. 739.

12. It is no objection in arrest of judgment, that the indictment contains several charges of the same nature in the different counts.
3 T. R. 93.

13. Two persons cannot be joined in the same indictment for being scolds. Stra. 921.

14. But in the case of felony, if it appear before the prisoner has pleaded or the jury are charged, that he is to be tried for *separate offences*, the Judge in his discretion may quash the indictment.
3 T. R. 106.

15. Or if the Judge do not discover it till after the jury are charged, he may put the prosecutor to his election on which charge he will proceed. 3 T. R. 106.

16. Judgment was arrested on an indictment setting forth that the defendant made an assault on two persons, the assaults being two distinct offences, and therefore could not be laid in the same indictment.
R. v. *Clendon*, Stra. 870.
Ld. Raym. 1572.

17. But see *R.* v. *Benfield and Saunders*, Burr. Rep. 984. where this case is denied to be law.

18. In an indictment for an offence at common law, a conclusion of *contra formam statuti* may be rejected as surplusage.
R. v. *Matthews*, 5 T. R. 162.
Leach, 664. S. C.

19. An indictment for a matter which was not an offence at common law, but which has been created by statute, must conclude, against the form of the statute, or it is bad.
R. v. *Harman*, Ld. Raym. 1104.

20. In an indictment against a receiver of stolen goods for a misdemeanor, it is not necessary to aver that the principal has not been convicted; but such a fact is matter of defence to be proved by the defendant. *R.* v. *Baxter*, 5 T. R. 83.

21. An indictment that the defendant was appointed overseer of the poor of the parish of A. "and that he afterwards refused to take the said office of overseer of the parish, to which he was so appointed," was held good on demurrer.
R. v. *J. Burder*, 4 T. R. 778.

22. In an indictment against a public officer for breach of duty, it is sufficient to state generally, that he is such officer, without shewing his appointment.
R. v. *E. J. Holland*, 5 T. R. 607.

23. In an indictment against a servant of the East India Company for offences in India, it is sufficient to charge him with a *wilful* breach of duty, without adding that it was corrupt. 5 T. R. 607.

24. In an indictment against an officer for disobedience of orders it is not necessary to aver that the orders have not been revoked, or that they

are in force; if they be not still in force it is matter of defence.
5 T. R. 607.

25. When a public officer is charged with a breach of duty, which duty arises from certain acts within the limits of his government, it is not necessary to aver in an indictment against him, that he had notice of those acts, he is presumed from his situation to know them.
5 T. R. 607.

26. A charge in an indictment against an officer with a breach of orders, in not prosecuting a war "with all possible vigour and decision," is too uncertain, even though the charge be made in the very words of the order given him. 5 T. R. 607.

27. In an indictment for conspiring to pervert the course of justice by producing a false certificate (under the hands of justices of the peace that a road indicted is in repair) in evidence, to influence the judgment of the Court; it is not necessary to set forth that the defendants knew at the time of the conspiracy that the contents of the certificate were false: it is sufficient that for such purpose they agreed to certify the fact as true, without knowing that it was so. 6 T. R. 619.

28. In an indictment on 37 Geo. 3. c. 70. making it felony to endeavour to seduce a soldier or sailor from their duty, it is sufficient to charge an *endeavour* &c. without specifying the means employed.
R. v. *Fuller*, (in Cam. Scac.) 1 B. and P. 180.

29. Under a charge that A. endeavoured to incite B. to mutiny, being a soldier, knowledge of B.'s being a soldier is implied. The word *advisedly* in such case is equivalent to *scienter*. 1 B. and P. 181.

30. *Semble* that if one *endeavour* to comprise two separate offences, a count in an indictment charging that *endeavour* may contain those two offences. *Ibid.*

31. A government storekeeper, resident in *Antigua*, transmitting false vouchers to his agent in *London*, who delivered them at the custom-house there, unknowing of the fraud, is indictable in *London*, as if for his own act there.
R. v. *Munton*, Sittings after Michaelmas term, 1793, (cited). 6 E. R. 590.

32. The court will not quash a defective indictment on the motion of the prosecutor after plea pleaded, before another good indictment be found.
R. v. *Dr. Wynn*, 2 E. R. 226

33. An indictment for an assault, false imprisonment and rescue, stated that the Judges of *the court of record of the town and county*, &c. of P. issued their writ, directed to T. B. *one of the serjeants at mace of the said town and county*, to arrest W., by virtue of which T. B. was proceeding to arrest W. *within the jurisdiction of the said court*, but that the defendant assaulted T. B. *in the due execution of his office*, and prevented the arrest; held such indictment bad; it not appearing that T. B. was *an officer of the court*: and that there could not be judgment after a *general* verdict on such a count as for a common assault and false imprisonment, because the jury must be taken to have found that the assault and imprisonment was for the cause therein stated, which cause appears to have been that the officer was attempting to make an illegal arrest of another, which being a breach of the peace, the defendant might for aught appeared, have lawfully interfered to prevent it.
R. v. *Osmer*, 5 E. R. 304.

34. The stat. 37 G. 3. c. 123. makes it felony for any person in any manner or form whatsoever to administer &c. any oath purporting or intended to bind the party to engage in any seditious purpose, or to disturb the public peace, or to be of any society &c. formed for any such purpose &c. or not to inform or give evidence against any associate &c. And by s. 4. it shall not be necessary in an indictment for any such offence to set forth the words of the oath, but it shall be sufficient to set forth the purport of it, or some material part thereof; held that an in-

ment charging that the defendants administered to J. H. an oath intended to bind him not to inform or give evidence against any member of a certain society formed to disturb the public peace for any act or expression of his or theirs &c. is good, without alleging the tenor or purport of the oath to be set forth, and without shewing in what manner the public peace was meant to be disturbed by such society.

R. v. *Moors*, 6 E. R. 419.

35. It is no objection, *on demurrer*, that several different defendants are charged in different counts of an indictment for offences of the same nature; though it may be a ground for application to the discretion of the Court to quash the indictment.

R. v. *Kingston & al.* 8 E. R. 41.

36. And an indictment against certain commissioners for a contempt of an order of essions in not paying the costs of an appeal awarded against them, stating generally that the party appealed to the sessions against a certain notice in writing under the hands of five commissioners acting in the execution of the statute, and which notice was made, or purported to be made, under the powers to them given by the act, seems sufficient; for the Court will presume, as against the persons issuing such notice, that it was signed by them when lawfully assembled at a public meeting holden by virtue of the act. 8 E. R. 41.

37. But counts in the indictment stating an appeal against a notice in writing, signed by A., B., C., D., and E., five of the commissioners, and an order by the Sessions, that *the commissioners acting under the statute, and being the respondents in the said appeal*, on service of the said order, should pay the appellant 10*l.* costs of appeal; and alledging *service* of the order *on those five and others acting as commissioners*, &c. and then charging, that at a subsequent meeting held by virtue of the act, A., B., (omitting C.) D., and E., and also F. and G. commissioners, were present and acting, and formed a majority, a demand of the 10*l.* costs was made on *those six*, which they refused to pay: and other like counts, charging service of the order upon part only of those who were indicted for a contempt of it; were on general demurrer holden by the Court of K. B. to be bad. And the offence being laid *jointly* against the several sets of defendants in each count, the Court could not give judgment on such an indictment even against the *four* who were parties to the appeal, and on whom service of the order was alledged, there being no count including these only. 8 E. R. 41.

38. If in an indictment the offence be charged to have been done in the time of the *late* king, and conclude against the peace of the present king, it is a fatal error.

R. v. *Lookup*, Burr. Rep. 1901.

39. And for this reason, upon writ of error brought, the judgment of the Court of K. B. was reversed by the House of Lords after judgment awarded. *Ibid.*

40. Immaterial averments, which are not connected with the charge in the indictment, need not be proved.

R. v. *Holt*, Leach, 677.
5 T. R. 436.

41. Indictment for taking and carrying away so many malt tickets, quashed, because it did not say from whence they were taken or to whom they belonged.

R. v. *Carter*, Ld. Raym. 890.

42. Indictment for forging a cocket for five packs of linen cloth, without saying how much cloth there was in those packs, held good, for it is sufficient to describe the thing in which it is contained.

R. v. *Brown*, 3 Salk. 172.

43. Where a defendant under particular circumstances mentioned in a statute subsequent to that creating the offence is exempted, the negative of these circumstances need not be averred in the indictment, but may be taken advantage of in evidence on not guilty pleaded.

R. v. *Pemberton*, Bl. Rep. 230.

44. On an indictment on 5 Eliz. c. 4.

s. 31. it was decided that whatever license might be given by any statute subsequent to 5 Eliz. to persons who had not served a seven years apprenticeship to exercise the trade of a farmer, under certain *other qualifications* therein described, yet as the trade of a farmer was clearly a trade used at the time of making the 5 Eliz. c. 4. it is not necessary in an indictment on that statute to aver the *want* of the *other qualifications*, which by a subsequent statute (1 Jac. 1. c. 22. s. 5.) entitle the person so qualified to use the trade; but such *other qualifications* or *exceptions must be shewn by the defendant*, by way of excuse either by plea or in evidence. It is enough for the prosecutor to bring the case within the general purview of the statute *upon which* the indictment is founded, if that statute has general prohibiting words in it: For where an indictment is brought upon a statute, which has general prohibiting words in it, it is sufficient to charge the offence *generally* in the words of the statute, and if a *subsequent* statute, or even a clause contained in the same statute, excuses persons under such and such circumstances, or gives license to persons so and so qualified, so as to *excuse or except* them out of the general prohibiting words, that must come by way of *plea* or *evidence*, "that the party is not within such general prohibition but excepted out of it."

R. v. *Pemberton*, Burr. Rep. 1035.

Indeed where the words of a statute are descriptive of the *nature* of the offence, or the purview of the statute, or necessary to give a *summary* jurisdiction, there it is necessary to specify in the particular words of such statute. *Ibid.*

45. Insensible and useless words which obstruct the sense of an indictment, may be rejected as surplusage.

R. v. *Redman & al.* Leach, 536.

46. An indictment against *Elizabeth Newman, alias Judith Hancock*, was for this fault quashed.

R. v. *Newman*, Ld. Raym. 502.

47. The word "chattels" improperly inserted in a count against an accessary may be rejected as surplusage.

R. v. *Morris*, Leach, 525.

48. The words "*purporting* to be a bank note" in an indictment mean that the instrument, *upon he face of it* appears to be a bank note, and the want of such appearance cannot be supplied by extrinsic evidence, such as the prisoner's averring at the time of putting it away that it was a good bank note.

R. v. *Jones*, Leach, 243.
1 Dougl. 300.

49. Q. whether an indictment against a person for enticing an apprentice to take away his master's goods, *which defendant received*, must state that the defendant did *actually take away* the goods.

R. v. *Collingwood*, 3 Salk. 42.

50. Where a statute enables trustees, but without incorporating or giving them collectively *a public name*, to prefer or order the preferring an indictment against any one who may steal the trust property, and allows the goods stolen to be laid as their property, it must be so laid as the property of A., B., C. &c. by their proper names, and the words trustees of &c. subjoined as a description of the capacity in which they were authorized by the legislature to act.

R. v. *Sherrington & Bulkley*, Leach, 578.

51. Q. whether an indictment for a trespass, in taking *vi et armis tres juvencas anglice* yearlings *coloris brown*, &c. is good, without saying *fuscus* or *subniger* being the proper Latin for brown.

R. v. *Shearing*, Ld. Raym. 1394.

52. The Court arrested the judgment upon an indictment, for that the keeper of the house of correction, having A. in his custody, who was committed by virtue of a justice of peace's warrant, the defendant unlawfully rescued him, it not being shewn for what A. was committed, so as to make the house of correction a proper prison, (which *primâ facie* it is not for all offences) and

and also because the Court could not judge of a proper judgment on so general a charge.

R. v. *Freeman*, Stra. 1226.

53. Stating a fact to have been done treasonably will not hurt an indictment for an offence that has a tendency to high treason, and the insertion of that word is not improper because it shews that the defendant had a treasonable intent but was afraid to put it in execution.

R. v. *Taylor*, Ld. Raym. 879.

54. If an act is stated to have been done in contempt of our said lord the king and his laws, and against the peace, the words against the peace being words of reference shall be held to relate to the king in whose reign the alledged offence was committed, and not to either of the other kings also before mentioned.

R. v. *Taylor*, Ld. Raym. 879.

55. Qu. Whether upon an indictment for forging an assignment of a lease, an allegation that it is witnessed by a certain indenture that a lessor had demised, and by the said indenture did demise, is a sufficient allegation that there was a lease.

R. v. *Goddard and Carlton*, Ld. Raym. 920. 3 Salk. 171.

56. An indictment was quashed after conviction upon error brought, because 1. it was *ideo veniat inde perator* when it should have been *præceptum est vicecomiti;* 2. it was *venerunt* the jury in the preterfect instead of *veniunt* in the present tense; and 3. because *qui tam* &c. was left out in the award of the *venire* which is an essential part.

R. v. *George*, Stra. 308.

57. In an indictment for perjury in an affidavit to hold to bail, it was laid to have been taken by virtue of a temporary statute which had been after continued by another statute, which latter act had also in some respects altered the former, and held well; for when an act is continued, every body is estopped from saying it is not in force.

R. v. *Morgan*, Stra. 1066.

58. If an indictment jointly charge two principals with two distinct felonies in separate counts, and then charge an accessary with receiving the principal felons knowing them to have committed *the felony aforesaid*, the uncertainty to which of the antecedent felonies this relative applies will vitiate the indictment against the accessary.

R. v. *Graham*, Leach, 101.

59. Where an indictment charged that *Francis* Morris the goods, &c. above mentioned so feloniously stolen &c. feloniously did receive and have, he the said *Thomas* Morris then and there well knowing the said goods &c. to have been feloniously stolen &c. After conviction it was moved in arrest of judgment, that the indictment having alledged that *Francis* Morris had received the property and that *Thomas* Morris knew it to have been stolen, the conviction could not be supported against the accessary for that the fact of receiving and the knowledge of the previous felony must reside in the same person, whereas the indictment charged them in two different persons: and the question was referred to the twelve judges, whether the words "*the said Thomas Morris*," could be rejected as surplusage: And they were unanimous that as the indictment would be sensible and good without those words, they might be struck out as superabundant and unnecessary.

R. v. *Morris*, Leach, 127.

60. An indictment stating that a road leading *from* the town of W. *to* the village of H. over a certain drain or ditch between the ancient enclosures within the parish of W. and town of H. and that the inhabitants of the town of H. ought to repair, is bad for uncertainty, not being laid to be *in* any parish.

R. v. *Hertford Inhab.* Cowp. 111.

61. In an indictment for not paying wages which had been ordered by justices, it must appear that they had power to order the payment of the wages.

R. v. *Helling*, Stra. 7.

62. Indictment against defendant for

that he *quondam Nich'um Carew baronettum*, being a justice of the peace in the execution of his office, *per diversa scandalosa minacia et contemptuosa verba abusus fuit et ipsum in executione officii sui predicti vi et armis illicite retardavit*, is bad; for 1st. the words ought to be set out that the Court may judge whether they are indictable or not; and, 2d. *retardavit* will hardly warrant calling it an obstruction, and if it would some act or other should be set out.

R. v. *How*, Stra. 699.

63. If the clerks in the Crown Office draw an indictment unnecessarily long the Court can punish them for it. Stra. 1026.

64. On demurrer to an indictment against defendant for a nuisance, charging that he *sepem levavit vel levari causavit*, judgment was given for defendant on account of the uncertainty of the charge.

R. v. *Stoughton*, Stra. 901.

65. After conviction on an indictment the judgment was arrested because the words *ad tunc et ibidem* were left out as to the swearing of the jury.

R. v. *Morris*, Stra. 901.

66. Defendant was indicted for selling ale *in black pots* not marked, and the indictment did not conclude against the stat.; but *per Cur.* it is good without such a conclusion, because the common law appoints that all measures should be just; therefore to sell less than measure is an offence at common law, and this circumstance of marking the measure is only added by the statute.

3 Salk. 329.

67. An indictment for a trespass before justices of the peace, must contain the words *nec non ad diversas felonias transgressiones et alia malefacta, &c.* for they have been in all the commissions ever since 18 Ed. 3. and where it is not a proceeding upon this common law jurisdiction, but a jurisdiction given by statute, they must shew an appointment to hear and determine.

R. v. *Carter*, Stra. 442.

68. For at first the justices were only conservators of the peace, and the subsequent power to hear and determine given by the stat. 18 Ed. 3. and 34 Ed. 3. is only that by commission they may have such a power.

Ibid.

69. An indictment for not working towards the repair of highways in London, according to 22 & 23 Car. 2. c. 17. s. 6. shewing merely that six days *inter* such a time, and such a time were appointed by the justices, and that defendant did not come upon *any* of the six days, is bad, for the appointment by the justices ought to be of such days in particular, as 20th April &c. and notice ought to be given accordingly, and if the appointment was ill, the defendant was not bound to come at all.

R. v. *Kime*, Ld. Raym. 898. Salk. 357. S. C.

70. A corporation must be described in an indictment correctly by their corporate name, and the addition of such corporate name *as descriptive of the persons* of which the corporation is composed, is not sufficient.

R. v. *Patrick and Pepper*, Leach, 287.

71. In this case the prisoners were indicted for cutting down in the night time trees growing in Enfield Chase, and the first count laid the trees to belong to J. B., G. C. and W. S. then being the churchwardens of Enfield aforesaid, they, the said J. B., G. C. and W. S. then being the owners of the said trees; the second count laid the same to belong to the same persons by name, then being the churchwardens of the parish church of Enfield, in the county of Middlesex. By the stat. 17 G. 3. c. 17. for dividing Enfield Chase, a certain allotment of the land was vested in the churchwardens of Enfield for the time being, and their successors for ever, in trust for the owners and proprietors of freehold and copyhold messuages, lands and tenements, within the parish, who were entitled to a right of common &c. within the Chase, and by s. 115. the churchwardens

were incorporated by the name of the churchwardens of the parish of Enfield, in the county of Middlesex. Leach, 287.

72. Indictment for taking fish *de bonis et catallis suis* bad, for they could not be so unless they were in a close pond or trench, but they might be *pisces suos* in a close pond, and this is *ratione loci*, because they could not swim away.

R. v. *Steer & al.* 3 Salk. 189.

73. Indictment *per jurator. præsentat. existit*, that defendant erected a cottage and *ulterius præsentant quod continuavit contra formam statuti*, and judgment reversed on a writ of error, for there is nothing to agree with *presentant*, and it is a new indictment distinct from the first, the matter whereof is no offence at common law, and the *contra formam &c.* necessarily refers to the *ulterius presentant* and no more.

R. v. *Trobridge*, 1 Salk. 371.

74. Upon an indictment for perjury, stating that a trial was had before the Chief Baron, *associato sibi* A. B. by *nisi prius* in Middlesex, that the defendant *ad tunc et ibidem in eadem Curia* before, and sworn before the Chief Baron *associato sibi* A. B. no objection can be taken, because the trial and perjury are stated to have been had and committed before the Chief Baron without mentioning his associate, for it shall be contended that the associate did continue with the Chief Baron all the trial, having been mentioned to have been there at the beginning.

R. v. *Denman*, Ld. Raym. 1221.

75. The coach glass of a gentleman's coach standing in a coach master's yard, who jobbed the horses for the carriage, and who stated he considered himself to be answerable to the owner of the coach for every thing belonging to it, may be well laid to be the property of the coach master.

R. v. *Taylor*, Leach, 359.

76. Husband and wife were indicted for an assault and battering, setting forth that they *vi et armis insultum fuit verberaverunt vulneraverunt &c.* and exception was taken that *insultum fuit* being the singular number, could refer only to one of the defendants, and it being uncertain which was charged, neither could be found guilty. But *per Cur.* it is well enough, for the *insultum fuit* might have been left out, and the *verberav. vulnerav. &c.* would have been sufficient, for there cannot be a battering and wounding without an assault, though there may be the latter without the former, and in an indictment if enough be laid to maintain it, it is well enough.

R. v. *Ingram & ux.* 1 Salk. 384.

77. Indictment against several for riotously assembling and breaking the chamber of S. in the house of *D. James*, and taking away goods, and the evidence was that it was the house of *D. Jameson*, held fatal, for the chamber is local, though the taking away the goods is not.

R. v. *Cranage*, 1 Salk. 385.

78. An indictment against the defendant, who was employed to make bread for the military asylum, which charged that he delivered to J. H. divers *i. e.* 297 loaves as and for good household bread, for the use and supply of the said asylum and the children belonging thereto, whereas the said loaves were not good household bread, but contained divers noxious and unwholesome materials not fit for the food of man, was held sufficiently certain without shewing *what* the noxious materials were, or that defendant intended to injure the children's health.

R. v. *Dixon*,
3 Mau. & Sel. Rep. 11.

79. An indictment on statute 37 G. 3. c. 7. for seducing soldiers, need not set out the means used for that purpose.

R. v. *Fuller*, Leach, 916.

80. Nor aver that the prisoner *knew* the person endeavoured to be seduced to be a soldier, for such a knowledge is necessarily included in the charge that he endeavoured to seduce &c. especially if the word

advisedly be used in the indictment, which shall be taken to be equivalent to the word knowingly.

Ibid.

81. Also it seems that such an indictment may without repugnance charge in the same count the double act, that the prisoner endeavoured to incite the soldier to *commit an act of mutiny, and to commit traitorous and mutinous practices.*

Ibid.

82. If a statute (24 G. 3. c. 51.) impose a duty on hats, and direct a stamp on paper tickets denoting such a duty to be affixed to each hat sold, and a subsequent statute (36 G. 3. c. 125.) enact that so much of the former statute *as relates to stamped paper tickets* shall cease, and that the rates of duty imposed by the former act shall be calculated according to the full value of the hats, and that all hats in respect to such duty shall, before they are sold, have a stamp upon the lining *to denote the duties by the former act imposed*, an indictment in the latter act for forging such stamp and mark, concluding against the form of the *statute* in the singular number, is good.

R. v. *Collins*, Leach, 963.

83. Information for importing tobacco in a vessel not belonging to the people of this nation, against the statute &c. and after verdict for the informer judgment was set aside, because by the statute the goods must belong to the people of this nation, and it was not averred that the tobacco imported did belong to the people of this nation, for it is that which makes the forfeiture, and it is none if imported in a foreign vessel and by foreigners, and the conclusion against the statute &c. will not help because the omission is in the most material part of the statute which creates the offence, and which ought to be strictly pursued.

3 Salk. 329.

III. *Finding of the Grand Jury.*

1. Indictment consisted of two counts, one for a riot ordered by the grand jury "*ignoramus*," the other for an assault returned "*bill a vera*," and held good.

R. v. *Fieldhouse*, Cowp. 325.

2. Two bills of indictment for the same offence, one for felony and the other for a misdemeanor, ought not to be preferred or found at the same time.

R. v. *Doran*, Leach, 608.

3. In this case the grand jury had found *both* true bills, which the Court said they could not do with propriety, and desired notice to be sent to the clerk of indictments at Hicks's Hall, to prevent the practice in future of preferring two such bills at the same time.

Ibid.

IV. *Striking out Counts.*

Though an assault be laid in an indictment twenty one different ways, yet the Court cannot on motion strike out any of the counts, it being the finding of the grand jury.

R. v. *Pewtress & al.* Stra. 1026.

V. *Copy of Indictment.*

1. A prisoner on his acquittal has an undoubted right and title to a copy of the record of such acquittal, for any use he may think proper to make of it.

R. v. *Brangan*, Leach, 32.

2. And after a demand of it has been made, the proper officers may be punished for refusing to make it out. *Ibid.*

3. The Judge will not permit a defendant indicted but acquitted of felony to have a copy of the indictment, whereon to ground an action for a malicious prosecution, if there was probable cause for the indictment; and such copy cannot be had without leave. 1 Ld. Raym. 253.

4. But in the case of *misdemeanors* the practice is otherwise, and a copy need not be granted by the Court, but the party may produce the original record.

Morrison v. *Kelly*, 1 Bl. Rep. 385.

5. Where the plaintiff and another were indicted for forgery and ac-

quitted, and a copy granted to the *other* only, yet the Chief Justice allowed the plaintiff, upon an action for a malicious prosecution, to read the copy in evidence, though the order was read by way of objection.

Jordan v. *Lewis*, Stra. 1122.

6. In 16 Car. 2. an order in writing was made by five judges, that no copies of any indictment for felony should be given at the Old Bailey without special order, Kel. Rep. 3. and in May session 1739 this order was re-published by direction of the Court.

Leach, 33. *n.*

7. The Court will not grant a copy of an indictment where the acquittal arises from the incompetency of a witness. Leach, 33. *n.*

VI. *Evidence and Plea.*

1. A defendant in an indictment for a misdemeanor cannot plead over to the charge, after a plea in abatement for a misnomer, on which issue is taken and found against him.

R. v. *Gibson*, 8 E. R. 107.

2. On an indictment on 17 G. 3. c. 26. s. 7. for taking more than 10s. in the 100l. for brokerage &c. it is not necessary to prove that the defendant took the exact sum laid in the indictment, though it be not laid under a *videlicet*.

R. v. *Gillham*, 6 T. R. 265. See *R.* v. *Burdett*, 1 Ld. Raym. 149. S. P.

3. And on the trial of such an indictment it is to be left to the jury to consider whether the excess were really taken as a fair charge for drawing the writings &c. or whether it were not so taken as a device, to avoid the statute. 6 T. R. 265.

4. If a servant being solicited to become an accomplice in robbing his master's house, inform his master thereof, who thereupon tells him to carry on the business, and consents to his opening a door leading to the premises, and being with the robbers during the robbery, and also marks his property and lays it in a place where the robbers are expected to come, this conduct of the master will not amount to a defence in an indictment against the felons.

R. v. *Eggington*, 2 B. & P. 533.

5. On an indictment on the stat. 31 G. 2. c. 10. s. 24. for taking a false oath to obtain letters of administration to a seaman in order to obtain his wages, it is necessary to have direct proof of the identity of the prisoner as being the person who took such false oath; and it cannot be inferred by the jury from the other collateral circumstances of the case.

R. v. *Brady*, Leach, 368.

6. Proof of words spoken *to* a person will not support an indictment charging that defendant spoke them *of* such a person.

R. v. *Berry*, 4 T. R. 217.

7. Upon an indictment on the stat. 37 G. 3. c. 123. making it felony to administer certain unlawful oaths, where the witness swearing to the words spoken by way of oath by the prisoner when he administered the same, said, that the prisoner held a paper in his hand at the same time when he administered the oath, from which it is supposed that he read at the time, yet held that parol evidence of what he in fact said was admissible without giving prisoner notice to produce such paper.

R. v. *Moore*, 6 E. R. 421.

8. And where the oath on the face of it did not import to be for a seditious purpose, yet held that evidence might be given that the *brotherhood therein* referred to was a seditious society. 6 E. R. 421.

VII. *Form of the Caption.*

1. The caption of an indictment removed into K. B. by *certiorari* must shew that the court where it was found had jurisdiction, and on a demurrer the Court will look into the *whole record* to see whether they are warranted in giving judgment on it, and it is therefore open to objections as well to the jurisdiction of the court where the indictment was found as to the subject matter of the indictment itself.

R. v. *Fearnley*, Leach, 475.

2. Upon demurrer to an indictment the caption appeared to be at a sessions held *ad festum Epiphanii*, instead of *Epiphaniæ*, and it was insisted for the defendant that this was a different time from that prescribed by the statute, for *Epiphanius* is in the *Roman* calendar and was a bishop of *Salamis* in the time of the Emperor Theodosius, and the Court held it ill and gave judgment for the defendant.

R. v. *Warre et al.* Stra. 698.

3. Where the caption of an indictment stated the court of quarter sessions where such indictment was found to have been held on an *impossible day*, it is fatal.

1 T. R. 316.

4. If the caption of an indictment shews that the jury found the bill upon their oaths, it need not state that they were sworn and charged.

R. v. *Morgan et al.*
1 Ld. Raym. 710.

5. The caption calling the bill "an indictment" is bad, for it is not an indictment till it is found.

R. v. *Brown*, 1 Ld. Raym. 592.
1 Salk. 376.

6. Caption was *jurat' & onerat'* without saying impannellat', but refused to be quashed by the Court.

Anon. 3 Salk. 191.

7. The Court would not quash an indictment because it was objected that the caption was *pro domina regina et corpore com'* where it ought to have been *pro corpore com'*.

R. v. *Cotesworth*, 3 Salk. 190.

8. The caption of an indictment held ill, because it did not set forth that the jury were *onerati* &c. to inquire for the king and the body of the county.

R. v. *Holliday*, 3 Salk. 187.

9. The caption of an indictment at the sessions was *sessio tent vicessimo et vicessimo octavo die Julii*, &c. and held bad, for though a sessions may adjourn from one day to another, and so sit by adjournment, yet it must not appear in a lump as sitting three days together, but distinctly.

Inter par. Lingfield & Battle,
3 Salk. 605.

VIII. *Variance between the Indictment and the Evidence.*

1. Where in an indictment on 13 G. 3. c. 56. for removing from one silver knee buckle to another certain stamps, marks and impressions, to wit, the king's head and the lion *rampant*, and in producing the knee buckle in evidence, it appeared that the mark was a lion *passant*; the Court held the variance fatal.

R. v. *Lee*, Leach. 464.

2. Where a word is misrecited and mutilated in an indictment, and the party has bound himself to a literal recital, it is fatal, if the mutilated word is itself a word, though it do not make sense with the context; but not, if it is not a word.

R. v. *Beech*, 1 Dougl. 194, n.

3. Yet "*Austrialia*" in the name of the South Sea Company, instead of *Australia*, has been held to be fatal in an action. *Ibid.*

4. Declaration of an indictment at the general quarter sessions, which was in fact at the general sessions, no material variance, the word quarter being surplusage.

Busby v. *Watson*, Bl. Rep. 1050.

5. Variance between the indictment and the *certiorari*, fatal.

Anon. 3 Salk. 80.

6. *Undertood* for *understood*, in an indictment for perjury, held an immaterial variance.

R. v. *Beach*, Cowp. 229. E. 26 G. 3. (cited) 1 T. R. 237.

7. An indictment for an assault had these words, "whereby his life was greatly despaired of" and indictment for perjury committed on that trial, setting forth the former indictment, omitted the word "despaired," which was supplied by the court.

R. v. *May*, (Dougl. 183.) *ib.*

8. An indictment for perjury stated the bill in Chancery to be directed to Robert Lord Henley, &c. whereas it was Sir Robert Henley, Knt. &c. and the objection was over-ruled.

R. v. *Lookup*, T. 7. G. 3. B. R. (cited) 1 T. R. 240.

IX. *Quashing Indictments.*

1. The Court will not quash any indictment which appears to be for a heinous offence, but will put the party to plead, demur or move in arrest of judgment.
R. v. *Inhab. of Betton,* 1 Salk. 372.

2. Nor will the Court quash any indictment for any crime concerning the highways. *Ibid.*

3. Indictment quashed because there was no caption to it.
R. v. *Savill,* 3 Salk. 188.

4. An indictment was quashed because the caption was *presentant existit* for *presentant,* for it being in another term was not amendable.
R. v. *Franklyn,* Ld. Raym. 1038.

5. The Court of K. B. upon the motion of a prosecutor, quashed a defective indictment for perjury, and allowed a new indictment wherein the deficiences and defects of the former one were supplied, to stand in the place of the old one.
R. v. *Webb,* Burr. Rep. 1468.

6. But the Court said this was not a motion of course.
Ibid.

7. The Court refused on motion to quash an indictment for an offence created by statute, because it did not conclude against the form of the statute, but they put the defendant to demur, and thereupon gave judgment for the defendant.
R. v. *Brotherton,* Stra, 701.

8. The Court refused to quash an indictment against defendants for having pretended to be officers of the land bank, and for having cheated J. S. of 14*l.* and for having pretended to assist him in procuring an office of messenger, whereas there was not any such office, because it was a cheat, and defendants if they imagined the law was with them might demur.
R. v. *Parry, Snelling & al.* Ld. Raym.

9. After a defendant on an indictment for perjury has paid costs for not going to trial, the Court will not grant the motion of the prosecutor to quash the indictment unless the prosecutor will pay costs.
R. v. *Moore,* Stra. 946.

10. The Court refused to quash an indictment for unlawfully taking *vi et armis* of ten pounds in *pecuniis numeratis* of J. S. on the ground that it was not shewn how many ounces these ten pounds contained, because they said they knew well how many ounces made a pound.
R. v. *Marks,* 1 Ld. Raym. 703.

11. An indictment quashed for the use of the word apprenticus instead of *apprenticias.*
R. v. *Franklyn,* Ld. Raym. 1179.

12. The Court would not quash an indictment against overseers for not paying over money to their successors, as quashing was not *ex debito justitiæ,* and this was a growing evil.
R. v. *King et al.* Stra. 1287.

13. The Court refused to quash an indictment for not attending the Mayor of Sarum to execute his warrant and said the defendant might demur to it.
R. v. *Balley,* Stra. 1211.

14. In the case of one of these defendants, judgment was arrested after verdict, and in the case of the other the indictment was quashed, being taken at an adjourned sessions and it not appearing what day the original sessions began, to bring it within the time prescribed by the statute.
R. v. *Fisher and Saunders,* Stra. 865.

15. An indictment for scolding was quashed, because it was not said to be *ad magnam perturbationem pacis dominæ reginæ* nor *subditorum* or *ligeorum suorum.*
Anon. 3 Salk. 187.

16. This indictment being *calumniatrix et communis et turbulenta pacis, purturbatix ac lites rixas et pugnas movit et incitavit et quendam Josephum Atherton verbis contumeliis et opprobiis abusa fuit in domo ipsius J. A.* was quashed for being too general.
R. v. *Taylor,* Stra. 849.

17. And so where a defendant had been convicted on an indictment

for being a common and turbulent brawler and sower of discord amongst her quiet and honest neighbours, so that she hath stirred, moved and incited divers strifes, controversies, quarrels and disputes amongst his majesty's liege people, against the peace &c. it was quashed for being too general, the charge not amounting to being either a barretor or a common scold, and it was besides not laid as a common nuisance, for every degree of scolding was not indictable.

R. v. Cooper, Stra. 846.

18. Indictment that twenty persons being assembled defendant not being licensed preached to them, not concluding against the statute, &c. quashed, for they might be defendant's own family to which the statute does not extend, and this is not an offence at common law.

R. v. Clerk, 1 Salk. 370.

19. Indictment for refusing to relieve a pauper according to an order made at the sessions quashed, because the order was only said to be made at the *general* sessions and not at the general *quarter* sessions, which it is necessary it should be by 43 Eliz. c. 2. s. 7.

R. v. Turnock, 2 Salk. 473.

20. Indictment against defendant for procuring the prosecutor to be arrested by a Justice's warrant and persuading the Justice to refuse bail, quashed, because it was not alledged that any bail was offered, and that *when* prosecutor was committed defendant extorted *divers* sums of money from him, and because it was not alledged that prosecutor was committed, or *what* sum was extorted from him.

R. v. Tracy, 3 Salk. 192.

21. Two indictments were quashed because the charge was laid by way of recital, and not positively.

R. v. Whitehead, 1 Salk. 370.

R. v. Hall, 3 Salk. 188. S. P.

22. An indictment for an offence under a statute quashed, because it did not conclude against the peace &c. *R. v. Lane*, 3 Salk. 190.

Ld. Raym. 1034.

23. Indictment for having said *magistratos civitatis* Litchfield *fore societatem asinorum* quashed, there being no such word as *magistratos*.

R. v. Lamb, 1 Ld. Raym. 609.

24. The defendant being indicted for not making his bread of lawful weight, demurred thereto, and exception was taken that it was only *debitum pondus minime habens*, not shewing how much *debitum pondus* was and what was wanting, and for this the indictment was quashed.

R. v. Flint, 1 Ld. Raym. 442.
2 Salk. 687.

25. An indictment for ingrossing *magnos et excessivis numeros volucrum ferarum* (*anglicè* wild fowl) *mortuarum*, with design to make them dearer quashed, because it was not shewn how many were ingrossed.

R. v. Foster, 1 Ld. Raym. 475.

26. Indictment for not repairing a pavement before defendant's house in Old-street, quashed because it was not laid *how* he was bound to repair it, and it was not within 22 and 23 Car. 2. c. 17.

R. v. Scott, Ld. Raym. 922.

27. The Court of King's Bench is not bound on motion to quash an indictment for a nuisance, the right way is for the defendant to demur.

R. v. Sutton, Burr. Rep. 2117.

28. An indictment against twelve persons for unlawfully exercising the trade of tanning leather contrary to 1 Jac. 1. c. 22. s. 5. quashed because it did not pursue the penalty annexed to the offence, viz. forfeiture of the leather tanned or the just value thereof, and because several defendants were joined in one and the same indictment.

R. v. Tucker & al.
Burr. Rep. 2047.

29. An indictment *quia male et negligenter se gessit in executione* of the office of constable, quashed for being too general.

R. v. Winteringham, Stra. 2.

X. *Procedendo and Nolle Prosequi.*

1. A *procedendo* was granted at the instance of the defendant to the quarter sessions, upon an indict-

ment for an assault removed into K. B. because the *certiorari* had not issued til *after* the defendant had *confessed* the assault below, though the conviction was not after a trial, and though several of the justices were sworn to be near relatives of one of the defendants.

R. v. *Gwynne & al.*
Burr. Rep. 749.

2. The Court on the prayer of the defendant ordered a *nolle prosequi* to be entered on an indictment against the Count de Guerchy, for soliciting a person to assassinate Mr. D'Eon, it appearing that wilful mistakes had been made in the indictment by the prosecutor.

R. v. *Guerchy, (Count.)*
Bl. Rep. 545.

3. The clerk of the court cannot enter a *nolle prosequi* on an indictment for perjury, without leave from the attorney-general.

R. v. *Cranmer*, 1 Ld. Raym. 721.

XI. *Judgment.*

1. The Court refused to dispense with the personal appearance of two justices who had on an information confessed themselves guilty of a misdemeanor in their office, and they were accordingly each committed for a month and fined £50.

R. v. *Hann and Price, (Justices of Corfe Castle)*, Burr. Rep. 1786.

2. And the general rule in such cases is, that though a motion to dispense with the personal attendance of the defendant is subject to the discretion of the Court either to grant or to refuse it, where it was *clear* and *certain* that the punishment *could not* be corporal, yet it ought to be denied in every case where it was either probable or possible that the punishment would be corporal, and even where the punishment would most probably be *only pecuniary;* yet in offences of a very *gross* and *public nature* the persons convicted should appear *in person*, for the sake of *example* and prevention of the like offences being committed by others, as the *notoriety* of these being called up to answer criminally for such offences would very much conduce to deter others from venturing to commit the like. *Ibid.*

3. Where a defendant is brought up for sentence on any indictment or information, *after verdict*, the defendant's affidavits shall be first read, and then those for the prosecution; after which the defendant's counsel shall be heard, and lastly the counsel for the prosecution.

R. v. *Bunts*, Reg. Gen. M. 29 G. 3. 2 T. R. 683.

4. Where a defendant is brought up for sentence *after judgment in default*, the prosecutor's affidavits shall be first read, then the defendant's; after which the counsel for the prosecution shall be heard, and lastly the defendant's counsel.
2 T. R. 689.

5. But if no affidavits be produced, the defendants counsel shall be heard first, and then the counsel for the prosecution. 2 T. R. 683.

6. After conviction on a criminal information to which objections were taken, the defendant must stand committed pending the consideration of the judgment, unless the prosecutor expressly consent to his standing out on bail.

R. v. *Waddington*, 1 E. R. 159.

7. After judgment on the defendant for a libel, the Court refused to make an order on the prosecutor to deposit the original libellous papers with the officers of the court.

8. Besides the common four-day rule on a defendant in misdemeanor to join in demurrer to his plea, there must be a temporary rule giving him a certain day in the discretion of the Court, without which judgment cannot be signed against him.

R. v. *The Hon. R. Johnson*,
6 E. R. 383.

9. When a defendant in an indictment is brought up for judgment, his acts subsequent to the trial may be considered either by way of aggravating or mitigating the punishment, even though they be separate and distinct offences, for which he may be afterwards punished. But in such

cases the Court will take care not to inflict a greater punishment than the principal charge itself will warrant.

R. v. *Withers*, 3 T. R. 428. and *R.* v. *Waiter*, 3 T. R. 432.

10. Judgment for a *trespass* in taking away instruments (a commission issuing out of Chancery and a return thereto) which concerns the realty, cannot be given on an indictment for stealing them, of which latter offence the prisoner had been acquitted on the ground that it was not felony.

R. v. *Westbeer*, Leach, 7.

11. Where the facts stated upon a special verdict upon an indictment for larceny do not amount to that offence, but are a great misdemeanor, judgment cannot be given thereon as for a misdemeanor only.

R. v. *Westbeer*, Stra. 1133.

12. If there is a general verdict of "*guilty*" on an indictment, it is sufficient if one of the counts is good. 2 Dougl. 730.

XII. *Arrest of Judgment.*

After judgment by *nil dicit* upon an indictment for perjury, defendant may move in arrest of judgment, but not after judgment upon demurrer.

R. v. *Deman*, Ld. Raym. 1221.

INFANT.

1. An infant against whom an information for a riot is exhibited may appear by attorney, and this is the usual practice.

R. v. *Tanner & al.* Ld. Raym. 1284.

2. Upon a *habeas corpus* the Court will not determine the right of guardianship of an infant, but will only tell the infant he is at liberty to go where he pleases.

R. v. *Smith*, Stra. 982.

3. And if a son on being brought up by *habeas* does not choose to go to his father, the father is not without remedy, for he may have trespass *quart filium et hæredem suum rapuit*, or other actions that would properly bring the right of guardianship in question. *Ibid.*

4. A child ten years old shall on an *habeas corpus* brought, be taken out of the custody of a guardian appointed by the spiritual court, and delivered to one appointed by her father's will.

R. v. *Johnson*, Ld. Raym. 1333.

INFORMATION (CRIMINAL).

I. *In what Cases grantable.*
II. *Against Justices of the Peace.*
III. *Form of, amending and quashing.*
IV. *Evidence and Venue.*

I. *In what Cases grantable.*

1. It is a *general* rule that the Court will not grant an information for a private libel charging a particular offence, unless the prosecutor will deny the charge upon oath.

R. v. *Miles*, 1 Dougl. 283.

2. Where the attorney-general as such possesses a right *ex officio* to exhibit an information against persons supposed to have committed a misdemeanor, the Court of King's Bench will not grant such an information upon the application of the attorney-general in cases prosecuted by the crown.

R. v. *Phillips & al.* Burr. Rep. 1565.

3. Same point.

R. v. *Phillips*, Burr. Rep. 2090.

4. A party applying for an information must waive his right of action; but if the Court on hearing the whole matter are of opinion that it is a proper subject for an action they may give the party leave to bring it.

R. v. *Sparrow*, 2 T. R. 108.

5. The Court granted a criminal information against one who had *attempted* to bribe a First Lord of the Treasury (the Duke of Grafton), to procure a patent of the reversion of the office of supreme court of judicature in Jamaica.

R. v. *Vaughan*, Burr. Rep. 2494.

6. An order made by a corporation

and entered in their books, stating that A. B. (against whom a jury had found a verdict with large damages in an action for a malicious prosecution for perjury, which verdict had been confirmed in C. B.), was actuated by motives of public justice &c. in preferring the indictment, is such a libel reflecting on the administration of justice for which the Court will grant an information against the members making that order. 2 T. R. 199.

7. The Court granted an information against a person for presenting a petition to the Court of Common Council reflecting on one of the aldermen.

R. v. *Barber*, Stra. 443.

8. The Court granted a rule against several persons to shew cause why an information should not be exhibited against them for using artifices with a woman inordinately addicted to drinking, in order to obtain a will from her when she was under very improper circumstances of mind to make one.

R. v. *Wright, Cross & al.* Burr. Rep. 1100.

9. A rising with a view to support the government against a treasonable assembly is lawful, and the Court will not grant an information against them although it appears that some irregularities were committed.

R. v. *Wigan (Inhab.)* Bl. Rep. 47.

10. Any subjects may arm themselves to quell riots, rebellions, &c.

Ibid.

11. The Court of King's Bench refused to grant a criminal information against several cheats and gamblers on the application of persons who appeared to be of the same *profession* and *character*, but left them to their common remedy by indictment or action, especially as the facts alledged appeared to come within the acts made to prevent excessive gaming.

R. v. *Peach & al.* Burr. Rep. 548.

12. The Court granted an information against an overseer for procuring a poor man to marry a single woman with child of a bastard, in order to get the bastard settled in the husband's parish.

R. v. *Tarrant*, Burr. Rep. 2106.

13. The Court refused to grant an information against the minister and churchwardens of a parish, who had received upwards of 14*l.* on a brief for sufferers by fire, and had spent 9*l.* at tavern entertainments, and then returned upon the back of the brief that 5*l.* 3*s.* 4*d.* only was collected, and signed their names to it.

R. v. *Minister and Churchwardens of St. Botolph, Bishopsgate*, Bl. Rep. 443.

14. A criminal information was moved for against a person not being a magistrate for reading a paper (to men employed to cut down his coppice), which he said was the king's proclamation against riots, but it not being proved to be so, the information was denied.

R. v. *Spriggins*, Bl. Rep. 2.

15. The Court refused to grant an information against a churchwarden for refusing to collect money on a brief for fire, according to 4 Ann. c. 14. for in this case there is a penalty given and a method for obtaining it.

R. v. *Ford*, Stra. 1130.

16. Information granted for endeavouring to procure the appointment of certain persons to be overseers of the poor, with a view to derive a private advantage to the party.

R. v. *Joliffe*, East, 32 Geo. 3. cited. 1 E. R. 154.

17. The Court will not grant a criminal information against the members of a corporation for a misapplication of the corporation money, but it is rather a subject for an application to the Court of Chancery.

R. v. *Watson*, 2 T. R. 199.

18. A criminal information for a conspiracy was granted against the master of a girl, who assigned her to a person of rank and fortune, colourably to learn music, but really for the purpose of prostitution, against the person to whom she was assigned,

and against the attorney who drew the assignment and indentures.

R. v. *Sir F. B. Delaval & al.* Burr. Rep. 1435.

19. The Court granted an information for taking away a natural daughter under sixteen, under the care of her putative father, being of opinion it was within s. 3. of 4 & 5 P. & M. c. 8.

R. v. *Cornforth & al.* Stra. 1162.

20. The Court granted an information against the defendants, who had contrived to get a young lady out of the custody of her guardian assigned in Chancery, though it appeared that she went voluntarily, and was carried into Sussex and there married.

R. v. *Ossulston, (Lord) & al.* Stra. 1107.

21. For though she went voluntarily the Court inclined to think it was a taking and conveying of her within the meaning of s. 3 & 4 W. & M. c. 8. which puts the case of her consenting and lays a penalty on her. *Ibid.*

22. Though the Court of Chancery had committed the defendants for a contempt, yet the Court of King's Bench granted the information, and the attorney general refused a *nolle prosequi*. *Ibid.*

23. The Court refused to grant a criminal information against a husband for endeavouring with violence to retake his wife contrary to articles.

R. v. *Vane, (Lord)* Bl. Rep. 18.

24. An information was granted against the captain of a ship of war for impressing the captain of a merchant vessel, the captain of the ship appearing to have acted maliciously.

R. v. *Webb*, Bl. Rep. 19.

25. Upon a motion for an information the Court refused to grant it, because it appeared that the facts were committed upon the high seas, and an information is local.

R. v. *Baxter*, Stra. 918.

26. Information for a battery in Newfoundland denied. *Ibid. n.*

27. The Court granted an information against this defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder, to the endangering of the church and houses where he lived.

R. v. *Taylor*, Stra. 1167.

28. An information lies for promising money for his vote to any one who has a vote in the election of the members of a corporation.

R. v. *Plympton*, Ld. Raym. 1377.

29. The Court will not grant an information for usury after the suit is lapsed to the crown.

R. v. *Hendricks*, Stra. 1234.

30. The Court granted an information against *particular persons* of the Company of Surgeons for a false report, although it was under their common seal.

R. v. *Surgeon's Company*, 1 Salk. 374.

31. The Court refused to grant an information against a dissenter who was chosen sheriff of London and Middlesex and refused to enter upon the office, it appearing upon shewing cause there were acts of common council that had provided penalties upon refusers, which is the proper remedy.

R. v. *Grosvenor*, Stra. 1193.

32. The Court granted an information against a person refusing to take on him the office of sheriff, because the vacancy of the office occasioned a stop of public justice, and the year would be nearly expired before an indictment could be brought to trial.

2 T. R. 731.

33. Upon a criminal information having been exhibited against the defendant, Vice-chancellor of Oxford, for not taking the deposition of a witness against two persons who had spoken treasonable words in the streets of Oxford, and for neglect of his duty as vice-chancellor and justice of the peace in not punishing such speakers, the Court refused to grant a rule to the proper officer of the university to permit their books, charters and archives to be inspected, in order to furnish evidence against the vice-chancellor.

R. v. *Parnell, (Dr.)* Bl. Rep. 37.

34. A criminal information having been granted against the defendant,

he, before the trial at *nisi prius*, distributed handbills in the assize town vindicating his own conduct and reflecting on the prosecutor's. This matter being disclosed to the Judge at *nisi prius* by an affidavit was held a sufficient ground to put off the trial; and that affidavit being returned to this court they granted another information on it against the defendant for such criminal conduct, considering the affidavit taken at *nisi prius* as taken under the authority of this court.

R. v. *Joliffe*, 4 T. R. 285.

35. An affidavit by A. stating that B. had brought him a challenge from C. and that B. had refused to make an affidavit that C. sent him with it, is not evidence in which this court will grant a rule *nisi* for a criminal information against C. for sending the challenge.

R. v. *Willet*, 6 T. R. 294.

36. The defendant on an information on statute 24 G. 3. c. 25. s. 64. respecting East India delinquents, must make his application for a *mandamus* for the examination of witnesses within the first four full days if at all after plea pleaded.

R. v. *Holland*, 4 T. R. 662.

37. When a statute creates a penalty and says that one moiety shall be to the use of the king and the other to a common informer, the king may sue for the whole by an information filed in B. R. by the attorney-general, unless a common informer has commenced a *qui tam* suit for the penalty.

R. v. *Hymen*, 7 T. R. 536.

38. On a rule for an information, though the Court think there is ground for granting it, yet if under all the circumstances the payment of the prosecutor's costs appears an adequate punishment, they will discharge the rule on the defendant's undertaking so to do.

R. v. *Morgan & al.* 1 Dougl. 314.

39. The Court refused to grant an information against a parish officer for making an alteration in a poor rate after it had been allowed by two justices, but with their consent, for the Court always look at the motive, and although the defendant had acted improperly, he appeared to have been misled by the magistrates.

R. v. *Burrat*, Dougl. 465.

II. *Against Justices of the Peace.*

1. The Court will not grant an information against a justice of the peace who has erred merely from ignorance when the heart is right, but if it appears that he acted from indiscreet or corrupt motives (to serve certain purposes) the Court will punish him by an information.

R. v. *Cozens & al.* Dougl. 426.

2. Wherever justices of the peace act uprightly, though they mistake the law, no information will be granted against them.

R. v. *Jackson*, 1 T. R. 653.

3. When a justice of the peace even acts *illegally*, yet if he has acted *honestly* and candidly, without oppression, malice, revenge or any bad view or *ill intention* whatsoever, the Court of King's Bench will never punish him in this *extraordinary* course of an *information*, but leave the party complaining to the *ordinary* legal remedy by action or indictment.

R. v. *Palmer & al.* Burr. Rep. 1162.

4. The Court will not grant an information against justices of peace sitting in a court of record in sessions, unless there be a very strong case indeed, with flagrant proof of their having acted from corrupt motives.

R. v. *Seaford, (Justices)* Bl. Rep. 432.

5. The Court granted an information against two justices who appeared to have refused granting an ale license to an innkeeper from motives of resentment against him, induced by his joining in an affidavit made in support of the interest in a borough which was averse to that espoused by the two justices and their friends.

R. v. *Hann and Price, (Justices of Corfe Castle)* Burr. Rep. 1716.

6. An information will be granted against a justice of the peace as well for granting as for refusing an ale license improperly.

R. v. *Holland*, 1 T. R. 692.

7. The Court of King's Bench granted informations against these defendants (justices for the borough of Penryn,) for refusing to grant licenses to those publicans who voted against their recommendation of candidates for members of parliament for that borough, having previous to such refusal *threatened to ruin* such publicans as voted contrary to their wishes.

R. v. *Williams and Davis*, Burr. Rep. 1317.

8. And Lord Mansfield declared that the Court granted the information not for the mere refusing to grant the licenses, (in which they had a discretion), but for the *corrupt* motive of such refusal, for their *oppressive* and *arrogant* refusing to grant them, because the persons applying for them would not give their votes as the justices would have them. *Ibid.*

9. The Court discharged a rule with costs which had been obtained, calling on the defendant (a justice of the peace,) why an information should not be exhibited against him for obstructing divine service and insulting the rector, it appearing that such rector (who was the prosecutor,) had grossly misbehaved himself and misrepresented the truth, and that the justice had acted properly, and under the direction of the bishop of of the diocese.

R. v. *Wroughton*, (Clk.) Burr. Rep. 1683.

10. The Court granted informations against several bailiffs of Ipswich, being justices as such, for taking money on granting ale licenses to alehouse keepers at Ipswich.

R. v. *Cornelius & al.* Stra. 1210.

11. The Court refused to grant a criminal information against a justice who had committed seven persons charged on the oath of a farmer with having *stolen* a quantity of barley in the straw in a field, which it appeared they entered under a pretence of leasing whilst great part of the corn remained in the field and some of it uncut: the justice having committed the persons in the first instance, afterwards bailed them, and there being a charge of *stealing*, the Court thought the justice was not only justified in what he did, but that he had even acted with *lenity*.

R. v. *Price*, Burr. Rep. 1925.

12. The Court granted an information against a justice for convicting a person without having previously summoned him.

R. v. *Allington*, (*Recorder of Hereford,*) Stra. 677.

13. The Court would not hear a motion against a justice for convicting without a summons until the conviction was removed before them.

R. v. *Heber*, Stra. 915.

14. The Court will not grant an information against a magistrate for having improperly convicted a person, unless the party complaining make an exculpatory affidavit denying the charge.

R. v. *Webster*, 3 T. R. 388.

15. The Court refused a criminal information against a magistrate for returning to a writ of *certiorari* a conviction of a party in another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk, the conviction returned being warranted by the facts.

R. v. *Barker*, 1 E. R. 186.

16. The Court granted an information against two justices who refused to certify under stat. 1 G. 1. c. 13. s. 11. that a person had not appeared before them according to their summons to take the oath.

R. v. *Newton & al.* Stra. 413.

17. The Court refused to grant an information against a justice of the peace who had refused to condemn a horse taken out of a team, pursuant to 5 G. 1. c. 12. (which requires proof to be made before a justice of the cause of forfeiture,) the party who seized tendering his

own oath which the defendant scrupled to take, or determine the affair in the absence of the owner or driver, both of which the Court said were reasonable objections.

R. v. *Sergison*, Stra. 1184.

18. A justice of the peace who had committed a man for horse stealing and bound over the owner to prosecute, afterwards upon examining two other persons admitted the party to bail. The prosecutor appeared at the assizes and found a bill, but the party accused did not appear, and for this the Court granted an information declaring he should not have bailed the man himself.

R. v. *Clark*, Stra. 1216.

19. The Court granted a criminal information against two magistrates who from illegal and corrupt motives had discharged a person committed by another magistrate as a rogue and a vagabond, without the knowledge or concurrence of the committing magistrate, which by the third section of the vagrant act (17 G. 2. c. 5.) they are expressly forbidden to do.

R. v. *Brooke and Robinson*, 2 T. R. 190.

20. The Court will not grant an information against the magistrates of a borough for having disfranchised persons entitled to their freedom, although sworn to have been done to serve election purposes, if the defendants deny that motive and swear that they thought there was a legal ground for the disfranchisement, and the ground on which the disfranchisement went has not been decided.

R. v. *Davie & al.* Dougl. 587.

21. A criminal information may be moved for against magistrates for misconduct in the execution of their offices, in the second term after the offence committed, there being no intervening assizes.

R. v. *Harries and Peters*, 13 E. R. 270.

22. But the application must be made in sufficient time in the second term to give the defendants an opportunity of shewing cause against it in the same term.

R. v. *Marshall and Grantham*, 13 E. R. 322.

23. The Court will grant a rule *nisi* for a criminal information at the end of a term against a magistrate for mal-practices *during the term*, but not for any misconduct before the term.

R. v. *Smith*, 7 T. R. 80.

III. *Form of, amending and quashing.*

1. Judgment was arrested upon an information upon which the clerk of a market had been convicted for illegal exactions, for being too general, "that under the colour of his office he did illegally cause his agents to demand and receive of several persons several sums of money on pretence of weighing their several weights and measures."

R. v. *Robe*, Stra. 999.

2. Where an information for perjury in swearing a young girl to be of age in order to obtain a marriage license, which was set out in *hæc verba*, and it appeared that the license was granted to marry in H. W. or A. and then came a blank which was filled up by the parson of P. who celebrated the marriage with the name of that parish, and as such it was described in the information; this does not make it a void license, for the place is not of the essence of the license, and the practice is to leave these blanks and fill them up afterwards.

R. v. *Beck*, Stra. 1160.

3. Upon a motion in arrest of judgment after a conviction on an information for attempting to persuade a witness not to appear and give against J. C. for forgery, it was objected that it was not positively averred in the information that C. *was* indicted, but only said that defendant, *sciens* C. had been indicted, did so and so; but it was held well enough, for had there been no such indictment proved at the trial the defendant must have been acquitted.

R. v. *Lawley*, Stra. 904.

4. An information may be amended upon payment of costs in a point to which a defendant has excepted by plea in abatement.
R. v. *Seawood, or Seaward*, Ld. Raym. 1472. Stra. 739. See *R.* v. *Stedman*, Ld. Raym. 1307.

5. An information for a misdemeanor may be amended the day before trial by a single Judge at chambers, on hearing both sides, and without the consent of the defendant, by striking out the word "purport" and in its place inserting the word "tenor."
R. v. *Wilkes*, Burr. Rep. 2527.

6. An information filed by the king's solicitor-general during the vacancy of the office of the king's attorney-general, is good in law.
R. v. *Wilkes*, Burr. Rep. 2577.

7. And in such case it is not necessary to aver upon the record that the attorney-general's office was vacant.
Ibid.

8. The Court upon motion refused to quash an information filed by the attorney-general.
R. v. *Gregory*, 1 Salk. 327. *R.* v. *Stratton & al.* S. P. 1 Dougl. 239.

9. For he may stop the proceedings upon it by *nolle prosequi*, and file another. 1 Dougl. 239.

10. An information *qui tam* is not to be quashed on motion.
R. v. *Jocamb*, Stra. 953.

IV. *Evidence and Venue.*

1. Evidence to the character of a defendant is not admissible upon the trial of an information in the Exchequer.
The Attorney-General v. *John Bowman, Sittings at Westminster, cor. Eyre*, Ch. B. 16 June, 1791. 2 B. & P. 532. *n.*

2. An information at common law for a conspiracy between the captain and purser of a man-of-war for planning and fabricating false vouchers to cheat the crown (which planning and fabrication were done upon the high seas), is well triable in Middlesex, upon proof *there* of the receipt by the commissioners of the navy of the false vouchers transmitted thither by one of the conspirators through the medium of the post, and the application *there* of a third person, a holder of one of such vouchers, (a bill of exchange) for payment, which he *there* received.
R. v. *Brisac and Scott*, 4 E. R. 164.

INQUISITION.

If an inquisition (finding the forfeiture of an office), find some points well and not others, and that which is found is well found, there may be a *meluis inquirendum*; but where the inquisition is defective and uncertain that cannot be supplied by a *melius inquirendum*.
Layton v. *Manlove*, 2 Salk. 469.

JUDGMENT.

1. A judgment of imprisonment against a defendant *to commence from and after a determination of an imprisonment* to which he was before sentenced for another offence, is good in law.
R. v. *Wilkes*, Burr. Rep. 2577. See *R.* v. *Rhenwick Williams*, Leach, 605, 6.

2. A defendant may be fined by the Court though absent, but he cannot move to mitigate the fine unless he appear in person. 3 Salk. 33.

3. But judgment for corporal punishment cannot be pronounced against a man in his absence even though he is outlawed.
R. v. *Harris and Duke*, 1 Lord Raym. 267. 1 Salk. 400.

4. For execution was never awarded even against a felon till brought to the bar. *Ibid.*

5. It is no ground for the Court to postpone passing judgment on a defendant convicted of bribery, to shew that one of the witnesses on whose evidence the defendant was convicted stood indicted for perjury, especially if the assignments of per-

jury do not go to the point which was in issue on the defendant's trial, but to collateral facts.

R. v. *Haydon*, Burr. Rep. 1387.

6. And in the above case it was relied on as a strong circumstance that Haydon himself was the first witness on the back of the indictment for perjury, and *all* or *all but one* of the other witnesses were examined at Haydon's trial. *Ibid.*

7. Besides Haydon *could not be a witness* against the witnesses alledged to have committed the perjury, because he was so much interested in the event of it. *Ibid.*

8. A defendant having been convicted on an information for subornation of perjury and judgment entered, and being afterwards taken on a *capias* and brought into Court, he offered to move in arrest of judgment, but it was denied.

R. v. *Darby*, Salk. 77.

9 Upon giving judgment for a riot the Court permitted the prosecutor to read in aggravation an affidavit stating that a gentleman who was in the room at the time of the riot, ill of the small pox, was so frightened that he died, though he was in a very good way before.

R. v. *Turner*, Stra. 139.

10. And the Court said that the reason for reading this affidavit was, that this was an immediate consequence of the riot, and could not subsist as a crime of itself, and that the true distinction was when the matter can or cannot subsist as a distinct crime by itself: and that if circumstances are not to be considered, the punishment for a riot must be the same in all cases, which would be highly unreasonable. *Ibid.*

11. A person attainted of a capital felony brought up into the Court of King's Bench by *habeas* for the purpose of having judgment awarded against him, upon reading the record of his conviction, denied being the same person, and that issue upon the identity was tried *instanter* by a jury, and being found against, execution was immediately awarded upon his former sentence.

R. v. *Rogers*, Burr. Rep. 1809, same point *R.* v. *Mathew*, and *R.* v. *King*. *Ibid.*

12. Persons attainted of capital felonies brought up into the Court of K. B. by *habeas* to have judgment awarded against them, who upon reading the records of their convictions deny being the same persons, which issue is instantly found against them, the Court of K. B. in awarding execution against them according to their former judgment and sentence will not fix the time and place of the execution of the criminals, saying it was more proper for them not to do it, that it was not usual at the assizes, but that the sheriff could do as he thought proper.

R. v. *Rogers*, *Mathews & King*, Burr. Rep. 1809.

13. But the Court made a rule to deliver the two who came up from Winchester into the custody of the sheriff of Kent. *Ibid.*

JURISDICTION.

1. A murder committed in Pembrokeshire may be tried in Herefordshire, for the Judges of Assize in the next adjacent English county have a concurrent jurisdiction throughout all Wales with the justices of the grand sessions.

R. v. *Athoe*, Stra. 552.

2. An *habeas corpus* was granted (without any affidavit) to remove the defendant from Brecknock Gaol to Hereford to take his trial there on an indictment.

R. v. *Davis*, Stra. 945.

This was done upon the authority of *Althoe's* case *ante*, that the adjacent English county has a concurrent jurisdiction by the stat. 26 H. 8. c. 4. *Ibid.*

3. A person in execution in B. R. may be there charged criminally by a justice of peace's warrant, but no such justice can take a prisoner of this Court out of the custody of

the Court and send him to the county gaol.

R. v. *Woodham*, Stra. 828.

4. Rules to shew cause why a *supersedeas* should not issue on a *certiorari* to return all indictments against the defendants justices of the town of Berwick, discharged.

R. v. *Cowle*, Burr. Rep. 834.

5. The time within which claim of conusance by the University of Cambridge must be made upon an indictment against one matriculated there for an assault.

R. v. *Agar & O'Meara*, Burr. Rep. 2820.

6. Where the caption of a presentment (for erecting of a cottage contrary to 31 Eliz. c. 7. s. 1.) returned into B. R. by *certiorari*, was *ad curiam visus franci plegii cum curia baron*, the Court held it good though it was objected that it did not appear at which of them the presentment was made, and one of them not having jurisdiction to take such presentment and therefore it was ill.

R. v. *Everard*, 1 Ld. Raym. 638, 1 Salk. 195.

7. For though one of those Courts only had jurisdiction, yet being both held together it must be taken as a caption by that Court that had authority to proceed in it. *Ibid.*

8. A person having been committed by the justices at a borough sessions for non-payment of a fine set on him for a contempt in court there, he brought a *habeas*, and the Court of K. B. held it a good commitment, upon which the defendant offered to pay the fine, but the Court said they could not take it, he must be remanded and pay it below.

R. v. *Elliott*, Stra. 785.

9. It seems that where a matter of right comes in question, justices of the peace have no jurisdiction.

R. v. *Burnaby*, 3 Salk. 217. Ld. Raym. 900.

10. Upon an information on 1 Jac. 1. c. 22. the Lord Mayor of London has no *personal* or summary jurisdiction but merely in sessions as the head of a court according to the course of the common law.

R. v. *Williams*, Burr. Rep. 386.

JURY AND JUROR.

1. At a sessions of gaol delivery on a trial for high treason, the Court could not have a full jury by reason of defaulters and the many challenged by the prisoner, whereupon the Court adjourned till another day and ordered another pannel to be then ready; it was objected that there ought to be a *tales* and an *habeas corpus* to complete the number of *nine jurors* who were already sworn, for otherwise this record would be left imperfect. *Sed per cur.* whereever the jury is summoned by a *venire facias* to try a particular issue there may be a *tales*, because there is a writ upon which it may be grounded, but where there is no *venire facias* it is otherwise, for there can be no *tales* but with an *habeas corpus* to bring in the first juries. Therefore in the case of *oyer and terminer* though perhaps there may be such a course yet in commissioners of gaol delivery it cannot be, and it is very plain that it is not necessary, for in such cases the course is for the justices before they come to court to send a written precept to the sheriff generally to return jurors against their coming, in order to deliver the gaol; and out of the pannels the jury is called and without any writ or precept in writing: and the entry is no more than this, viz. that the prisoner pleaded not guilty *idio immediati veniat inde jurator*, and this is always before issue joinded, and therefore it is never to try a particular issue; and in this respect the proceedings of *oyer and terminer* differ that they do not send a general precept to the sheriff before issue joined, but a particular precept after issue joined to summon a jury to try a particular issue, so that this is a precept in nature of a *venire facias* upon which account perhaps a *tales* may be

grantable, but here it is otherwise, because there is neither a particular *ven. fac.* or precept in the nature of one.

R. v. *Cooke*, 3 Salk. 338.

2. If a juror be taken ill during a trial for felony, the jury may be discharged and the prisoner be tried by another jury.

R. v. *Scalbert*, Leach, 706.

R. v. *Edwards*, 4 W. P. T. 309. S. P.

3. In the above case in Leach the eleven remaining jurors being resworn, served with a new jury on the second pannel.

Leach, 706.

4. If a prisoner indicted for felony with whom the jury are charged, be by sudden illness during the trial rendered incapable of remaining at the bar, the jury may be discharged from the trial of that indictment, and the prisoner on his recovery be tried bfore another jury.

R. v. *Stevenson*, Leach, 618.

5. If a jury give a verdict on their own knowledge they ought to tell the Court so, that they may be sworn as witnesses, and the fair way is to tell the Court so before they are sworn, that they have evidence to give.

Anon. 1 Salk. 405.

6. A Scotch covenanter may be sworn as a juryman in a criminal case by the ceremony of holding up his hand without kissing the book.

Walker's case, Leach, 561.

7. The affidavit of a juror of what he thought or intended previous to the verdict being given cannot be received in evidence for the defendant after verdict.

R. v. *Woodfall*, Burr. Rep. 2667.

R. v. *Almon*, Burr. Rep. 2686. S. P.

8. But where there is a doubt upon the Judge's report as to what passed at the time of bringing in the verdict, then the affidavits of jurors or bye-standers may be received upon a motion for a new trial, or to rectify a mistake in the minutes.

Burr. Rep. 2667

9. The statement by eight of a jury after verdict in favour of a defendant, representing their disapprobation of the verdict, was highly censured by the Court of King's Bench, and totally disregarded.

R. v. *Thirkell*, Burr. Rep. 1696.

10. A juryman may not be examined to any matter criminal or infamous in order to challenge.

Anon. 1 Salk. 521.

11. On a challenge for favour two jurors were sworn to be tryers, and their oath was "you shall well and truly try whether A. S. (the juryman challenged) stands indifferent between the parties to this issue.

Anon. 1 Salk. 152.

12. If a sheriff return a jury to try an indictment in which he is prosecutor, it is good cause to challenge the jury, but after conviction it cannot be moved in arrest of judgment.

R. v. *Sheppard*, Leach, 119.

13. On issue joined on the replication of *nul tiel* record to a counter plea of felony, the prisoner is entitled to challenge any of the jurors before they are sworn upon that issue.

R. v. *Scott*, Leach, 456.

14. Three being indicted of high treason in conspiring the death of the king, they pleaded not guilty, and Holt, Ch. J. told them that each of them had liberty to challenge thirty-five of those who were returned upon the pannel to try them without shewing any cause, but that if they intended to take this liberty they must be tried separately and singly, as not joining in the challenges: but if they intended to join in the challenges, then they could challenge but thirty-five in the whole, and might be tried jointly upon the same indictment.

R. v. *Charwick, King, and Keys*, 3 Salk. 81.

15. A *tales* is never awarded upon an indictment unless by warrant from the attorney-general, but it is awarded upon an information *q. t.* because of the interest which the prosecutor has in such prosecutions.

3 Salk. 339.

16. If upon an indictment for barretry

the prosecutor cannot go on for want of the copy of several processes, the Court will not allow him to withdraw a juror.

R. v. *Jeffs*, Stra. 984.

7. For in cases where the punishment as in this and perjury may be infamous, it is never done. *Ibid.*

8. Stat. 4 and 5 Ann. c. 16. s. 8. relative to views does not extend to criminal cases, so that in them there can be no rule for a view without mutual consent, and by stat. 3 G. 2. c. 25. it is not necessary that six of the first twelve jurors impannelled shall attend at the view, or at the trial, and the trial shall not go off from non-attendance of the viewers.

1 Burr. Rep. 252.

9. Juryman put upon the pannel above eighty years of age discharged by the Court.

Anon. Loft. 213.

10. In a natural issue (as of identity &c.) the prisoner is not allowed any peremptory challenges, because his life is not in jeopardy.

R. v. *Radcliffe*, Bl. Rep. 6.

11. If the inhabitants of an hundred have enjoyed an immemorial exemption from serving on juries out of the hundred, they are not liable under any of the statutes relating to jurors, for the statutes being affirmative do not take away the prior exemption.

R. v. *Pugh*, 1 Dougl. 188.

LARCENY.

I. *Of what Things Larceny may be committed.*
II. *Evidence of felonious Intent.*
III. *Larceny from the Person.*
IV. *Larceny by Servants.*
V. *In ready furnished Lodgings, Shops, &c.*
VI. *In the Dwelling House.*
VII. *On navigable Rivers.*
VIII. *Of Property fixed to the Freehold.*

I. *Of what things Larceny may be committed.*

1. A commission issuing out of Chancery empowering the commissioners therein named to ascertain the boundaries of a manor and a return to such commission are instruments concerning the realty, and therefore cannot be the subject of larceny.

R. v. *Westbeer*, Leach, 15.
Stra. 1138.

2. The sashes of windows put into their frames and fastened in by laths nailed across the frames to prevent their falling out, but neither hung nor beaded in the frames are not fixed to the freehold, and therefore may be the subject of larceny.

R. v. *Heilge*, Leach, 240.

3. A prisoner cannot be found guilty of larceny if it appear that he could not otherwise get the goods than by the delivery of them to him by the owner's wife.

R. v. *Harrison*, Leach, 56.

4. To pull wool from the body of live sheep and lambs, if done with an intent to steal it, is a larceny.

R. v. *Martin*, Leach, 205.

5. So larceny may be committed by taking the milk from a cow.

Ibid.

6. In these cases the principle is, that where larceny may be committed of the thing itself, it may also be committed of the produce of that thing. *Ibid.*

7. Qu. Whether it be necessary in

such cases that the thing stolen should be of the value of ten pence.
Ibid.

II. *Evidence of felonious Intent.*

1. If several persons having a secretary of state's warrant to apprehend certain suspected persons, call soldiers to their assistance and break open the door of a house for the purpose of apprehending the suspected persons, and when in the house some of the soldiers steal goods, those who were not guilty of the actual stealing were acquitted, notwithstanding their being engaged in an unlawful act of breaking the door, and the reason was because it was a mere chance opportunity of itself, whereupon some of them did lay hands.
Cited (as being mentioned by Holt, Ch. J. in delivering a judgment,) Leach, 8.

2. If a person having ordered a tradesman to bring goods to his house, look out a certain quantity, ask the price of them, separate them from the rest, and then by sending the tradesman home on pretence of wanting other articles, take the opportunity of running away with the goods so looked out, with intent to steal them, it is larceny, for there did not appear a sufficient delivery to change the property, which still remained in the tradesman.
R. v. *Sharpless and Greatrix*, Leach, 108.

3. If a tradesman agrees to sell goods to the prisoner for ready money, and accordingly books them, leaves them with him with a bill of parcels, and receive in payment by his servant two bills which afterwards appear to be fabricated, the prisoner is not guilty of larceny, although the tradesman never intended to give credit, and the jury find that the prisoner intended to defraud the tradesman of the goods.
R. v. *Parkes*, Leach, 703.

4. The prisoner was however afterwards convicted of a misdemeanor.
Ibid.

5. To remove a package from the fore part to near the tail of a waggon with a felonious intent to take it away, is a sufficient asportation to constitute larceny.
R. v. *Coslet*, Leach, 271.

6. But to *raise up* a pocket of hops in a waggon in a perpendicular posture, but without having *removed* it from the place where it originally lay, is not a sufficient asportation.
Anon. case, Leach, 271.

7. So to tear an ear ring from a lady's ear, whereby the ear was torn through, and the ear ring being afterwards found in the lady's hair, is a sufficient asportation and force to satisfy an indictment for robbery.
R. v. *Lapier*, Leach, 360.

8. Upon an indictment for stealing in a dwelling house, where it appeared that the prisoner had taken plate out of a trunk and laid it on the floor, but was apprehended before he had carried it away, all the judges held this to be a sufficient asportation.
R. v. *Simpson*, Leach, 362. *n.*

9. But where the prisoner stopt the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down or he would shoot him, and the prosecutor accordingly laid the bed on the ground, but before the prisoner could take it up so as to remove it from the spot where it lay he was apprehended, the Judges held that the offence was not completed.
R. v. *Farrell*, Leach, 362. *n.*

10. To remove sheets from a bed and carry them to an adjoining room with intent to steal them, is a sufficient asportation.
Leach, 362.

11. Qu. Whether upon a *special case* found that the prisoner went into a tradesman's shop *with intent unlawfully* to obtain and convert to his own use the goods mentioned in the indictment, and by a false pretence obtaining the goods and so converting them, be felony or not.
R. v. *Cockwaine*, Leach, 562.

12. This case was referred to the Judges, but no opinion was ever given, and the prisoner was ultimately pardoned. *Ibid.*

here a person came to a shop
asked the owner to shew him
linen, which was delivered into
ands and then he ran away with
ld to be larceny: for the sub-
ent act of his running away
it plainly shewed his intention
ke the goods feloniously, before
roperty was uttered.
Salk. 194.
prisoner was executed.

a person obtain a carriage from
desman under a pretence of
g it, and afterwards convert it
s own use, he is thereby guilty
arceny if the jury find that he
an original intention to steal it,
ugh the contract of hiring was
ay indefinite time.
v. *Semple*, Leach, 470.

obtain goods by false pretences
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v. *Wilkins*, Leach, 586.

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e table is not guilty of lar-
, although the jury find that
whole was a fraudulent contri-
e and conspiracy to get posses-
of the prosecutor's money.
v. *Nicholson, Jones, and Chap-
pel*, Leach, 698.

person who induces another to
r bank notes to him by the
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in such a time the entire value
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belong to the person delivering
otes, is guilty of larceny, for
ugh the *property* of the notes
ted with on the particular con-
dition, yet the *possession* still re-
mains with the owner.
R. v. *Watson*, Leach, 730.

18. Especially if the prosecutrix state that she did not pay the notes to the prisoner as a purchase of the jewel, but merely as a deposit for the value of it. *Ibid.*

19. To aid and assist a person to the jurors unknown to obtain money by the practice of ring dropping, is felony, if such aider be present at the time the money is obtained from the prosecutor, and the jury find that the prisoner was confederating with the person unknown to obtain the money by means of this practice.
R. v. *Moore*, Leach, 354. See post. No. 25.

20. If a horse be agreed to be purchased and in pursuance thereof is delivered to the prisoner by the orders of the prosecutor, it is not larceny in the prisoner *immediately* to ride away with it without paying the purchase money, for this was a *sale*, and the possession as well as the property was entirely parted with.
R. v. *Harvey*, Leach, 528.

21. If a person hire a horse in the name of another for the purpose of going to a certain place, and afterwards proceed part of the way towards that place, but eventually in the same day sell that horse, if the jury find that at the time he obtained the horse he meant to convert it to his own use, it is felony.
R. v. *Charlewood*, Leach, 456. See post. No. 24.

22. If a parcel be accidentally left in a hackney coach, and the coachman instead of restoring it to the owner detain it, open it, destroy part of its contents and borrow money on the rest, he is guilty of larceny.
R. v. *Wynne*, Leach, 460.

23. So where the prosecutrix on arriving at her place of destination desired the prisoner a hackney coachman to give her parcel to a servant which he neglected to do, and drove away with it in the coach, and the goods contained in the parcel (which had been opened), were

afterwards traced to the prisoner's possession, he on seeing the prosecutrix again, denying all knowledge of her or of the things, or of his ever having had such a fare, this was held to be larceny in him.

R. v. *Sears*, Leach, 463.

24. If a person obtain a horse under pretence of hiring it for a day and immediately sells it, the delivery of it to him by the owner for that specific purpose does not change the *possession*, and therefore if the original hiring by the prisoner was with intent to steal it, he is guilty of larceny.

R. v. *Pear*, Leach, 253. *R.* v. *Tunnard*, Leach, 255. *n.* S. P.

25. Where the prisoner and two others had joined company with the prosecutor in the street, and after walking a short space one of them stooped down and picked up a purse which upon inspection was found to contain a ring and a receipt for £147. purporting to be the receipt of a jeweller for a rich brilliant diamond ring, and the prisoner proposed that they should go into a house and consider how they should divide the prize, which was assented to, and when there the prisoner asked the prosecutor if he would take the ring and deposit his money and watch as a security to return it on receiving his portion of the value, to which he agreed and signed a written agreement to that purpose, and that the prosecutor accordingly laid his watch and money on the table and received the ring, then the prisoner beckoned the prosecutor out of the room under pretence of speaking to him in private, and that during that interval the other two men went off with the property. The Court upon the authority of *Pear's* case directed the jury to consider whether the whole transaction was not an artful and preconcerted scheme in the three men feloniously to obtain the prisoner's watch and money, and the jury accordingly found the prisoner guilty.

R. v. *Patch*, Leach, 273.

26. To obtain a bill of exchange from an indorsee under pretence of discounting it, and afterwards converting the produce of it is felony, if the jury find that the prisoner had a preconcerted design to get the note into his possession with an intent to steal it, and that the indorsee did not intend to part with the note to the prisoner without having the money paid before he parted with it.

R. v. *Aickles*, Leach, 330.

27. A stock-broker having advised a proprietor of stock as to the proper time of disposing of it, sold the stock for him and with the consent of the prosecutor received the produce. The prosecutor instructed him to purchase exchequer bills to the amount, but the prisoner stating it to be too late an hour on that day so to do, lodged the money with his own bankers and gave the bankers of the prosecutor a check for the amount: On the following day the prosecutor drew a check on his banker for a larger sum and gave it to the broker to purchase exchequer bills: The broker received of them bank notes for the payment of the check with a part he bought exchequer bills for the prosecutor and delivered them to the prosecutor's bankers, and with part of the residue he paid for American stock and foreign coin which he had previously purchased with intention to abscond, and paid away the rest in discharge of some of his private debts, and then absconded: Upon a doubt whether these facts amounted to a larceny of the check and bank notes it was argued in the Exchequer Chamber; no opinion was ever publicly delivered by the Judges but the prisoner was ultimately discharged.

R. v. *Walsh*, 4 W. P. T. 458.

28. If a banker's clerk who is entrusted to receive bank notes and money at the shop counter, instead of putting them into the cash drawer secretes them or convert them to his own use it is not larceny, for the property never was in the possession of the banker.

R. v. *Bazeley*, Leach, 793.

29. But now by stat. 39 G. 3. c. 85. it is felony.

See *R.* v. *Patinson*, Leach, 991. *n.*

30. It is a larceny for the confidential clerk of a merchant to take a bill of exchange unindorsed from the bill box after it has been in the possession of his master and convert it to his own use, for as it had not been delivered to him for his purpose by his employer, it is a *felonious taking* from the possession of the master.

R. v. *Chipchase*, Leach, 805.

31. A banker's clerk enters a fictitious sum in the ledger to the credit of a customer and tells him he has paid that sum to his account, and on the faith of it obtains from the customer his check on the bankers, which the prisoner pays to himself by bank notes from the till, and enters in the waste book a true account of the check drawn and notes as paid to "a man," this was held to constitute a larceny of the notes.

R. v. *Hammon*, 4 W. P. T. 308.

32. If a servant to whom goods are delivered by his master to carry to a customer break open the package in which the goods are contained and sell them, and receive the produce to his own use, he is guilty of larceny, for standing in the relation of a servant the *possession* of the goods remained in the master until and at the time of the conversion of them by the servant; the master was to receive the money for them of the customer, and he could at any time have countermanded the delivery of them; the prisoner by breaking open the packages tortiously took them from the possession of the master, and having by the sale converted them *animo furandi* to his own use, the taking is felonious.

R. v. *Bass*, Leach, 285.

33. And where a silk throwster had men come to work in his own house, and delivered to one of them silk to work and he stole part of the silk delivered to him, held to be larceny, *per* Hyde, Ch. J. for it was delivered to him only to work, and so the entire property remained then only in the owner.

O. B. Oct. Session, 1664.

Leach, 286. *n.*

34. So a butler who had plate delivered to him, or a shepherd sheep, and they steal any of them, it is larceny at common law.

See Leach, 286. *n.* and Kel. Rep. 35.

35. And so if one delivers goods to a porter to carry to a certain place, and he takes them and carries them away to another place and then opens and disposes of them, it is felony; and also where one bargained with another to carry certain bales of goods to Southampton, and he took them and carried them to another place and broke open the bales and took the goods contained therein, and converted them to his own use and disposed of them suspiciously, held larceny, for notwitwstanding the delivery the property remained in the balors.

Leach, 286. *n.*

36. Where a person who has no title to a house brings an ejectment and procures a false affidavit to be filed of the delivery of the declaration to the tenant in possession, and for want of appearing and pleading gets judgment and possession, and thereby enters the house and seizes the goods and converts them to his own use, he is for thus making use of the powers of the law for a felonious purpose guilty of felony, and in this case the prisoner was hanged.

3 Salk. 194.

III. *From the Person.*

1. A taking violently in the *presence* is a taking from the *person*.

R. v. *Francis & al.* Stra. 1015.

2. The stat. 8 Eliz. c. 4. is silent as to aiders and abetters, and the rule of law has always uniformly been to confine the guilt of privately stealing to the individual hand that commits the fact, and therefore where it was in evidence that the prosecutor and the two prisoners were drink-

ing together, and that the prosecutor fell asleep and when he awaked missed his watch which immediately afterwards was found on one of the prisoners: the Court directed an acquittal on the capital part of the indictment, it being uncertain which of the two prisoners took the property.

R. v. *Mary and Bridget Murphy*, Leach, 302.

3. This offence generally depends on a nice species of dexterity which does not require the assistance of a second person to perform, and therefore the legislature has not thought it necessary to involve those who are present when the offence is committed in the severity of the punishment, however well inclined they may be to give effect to its completion.

Ibid.

4. The stat. 8 Eliz. c. 4. only extends to the person *actually* committing the offence, and not to aiders and abetters, therefore he only whose hand actually takes the property is guilty of privately stealing; and the bare possession of property so stolen is not sufficient to convict the prisoner of an offence under the above act.

R. v. *Sterne*, Leach, 531. See No. 11.

5. Aiders and abetters are not within the meaning of the statute which takes away the benefit of clergy from such as should be found guilty of the offence, and is totally silent respecting aiders and abetters.

R. v *Innis & al.* Leach, 9.

6. Therefore where it appeared in evidence that the prosecutor and prisoner having been drinking together till they were both intoxicated, and that they went home together to the prisoner's lodgings where the prosecutor fell asleep, and that while he slept the prisoner stole his watch, the Court upon the authority of the preceding cases held that the case did not come within the act.

R. v. *Gribble*, Leach, 275.

7. A person who had been intoxicated at Vauxhall gardens fell asleep on his way home in one of the niches on Westminster bridge. The prisoner passing by stole the buckles out of his shoes without waking him, and the judges were of opinion that the statute was intended to protect the property which persons by proper vigilance and caution should not be enabled to secure, but that it did not extend to persons who by intoxication had exposed themselves to the danger of depredation by destroying those faculties of the mind by the exertion of which the larceny might probably be prevented.

Leach, 275. 2 Hawk. P. C. 490. See post. No. 12.

8. But this merciful construction of the act is not carried so far as to exempt from its pains those who steal from the person of another who is taking natural rest, and therefore it appearing that the prisoner stole a watch belonging to the prosecutor (who was master of a vessel lying in the river Tyne), while he was asleep in his cabin privately from his person and without his knowledge, the case being reserved for the opinion of the Judges, they were unanimous that the conviction was right.

R. v. *John Thompson*, Leach, 489.

9. And the foregoing case was confirmed by one of a similar nature, in which it appeared that the prosecutor, a waggoner, was sleeping on a truss of straw in the stables of an inn yard while his horses were feeding, and that the prisoner, who was horse keeper to the prosecutor's master, confessed having taken money from the prosecutor's person without his knowledge whilst he slept: the prisoner's counsel mentioned the Vauxhall case, and said that the act did not extend to protect the property of persons asleep; but the Court said that whatever notions might have formerly prevailed on this subject, the contrary had lately been determined by all the Judges of England* in a case reserved from the assizes at Newcastle, and that

* Alluding probably to Thompson's case.

this determination had since been confirmed by another case of the like kind before the recorder of Bristol.

R. v. *Willan*, Leach, 558.

10. After the decision of this case it seems unnecessary almost even to mention that of *the King* v. *Bradley and Jones*, O. B. sessions 1778, cited in 2 Leach, 276. *n.* it being completely overturned by the above mentioned subsequent decisions.

11. Several persons being indicted under 8 Eliz. c. 4. for stealing privately from the person, and it appearing that the note which was the subject of the indictment was lost during a drunken scuffle, and it became impossible to ascertain which of the prisoners if any had stolen it: the Court directed an acquittal of all; for under the statute the hand alone which takes the property can be guilty of the offence.

Leach, 9.

12. A privately stealing from a person rendered senseless by intoxication is not within 8 Eliz. c. 14.

R. v. *Kennedy*, Leach, 913.

R. v. *Morris*, Leach, 915. *n.*

13. But the prisoner may under such circumstances be acquitted of the capital part of the charge and found guilty of simple larceny. *Ibid.*

IV. *By Servants, (and see ante Div. II.)*

1. In an indictment on 39 G. 3. c. 85. against a servant for embezzling money received on his master's account, it is not sufficient to follow the words of the statute, but there must be a positive allegation that the money was the property of the master, as in the case of larceny at common law.

R. v. *M'Gregor*, 3 B. & P. 106.

2. If a servant receive money for his master in the county of A. and being called upon to account for it in the county of B. there deny the receipt of it, he may be indicted for the embezzlement in the latter county.

R. v. *Taylor*, O. B. 1803.

3 B. & P. 596.

V. *In ready furnished Lodgings, Shops, Warehouses, &c.*

1. A person who hires a *ready furnished* HOUSE is not guilty of felony within 3 & 4 W. & M. c. 9. s. 5. by stealing any of the goods let to him with the said house.

R. v. *Palmer*, Leach, 782.

2. It appearing in evidence upon an indictment on 10 & 11 W. 3. c. 23. against the prisoner for stealing a piece of woollen cloth privately in the warehouse of the prosecutor, that the prosecutor was a Blackwell Hall factor, and received goods by bales or packages from the manufacturers in the country, each piece of which was separately tied up in paper and marked on the outside thereof; that on receiving them into his warehouse they were sometimes taken out of the bales immediately (but never out of the papers), and done up on shelves; sometimes they continued in the bales till a customer called for such articles as the papers contained, but no goods were ever exposed to sale by hanging them at the warehouse window or at the door, nor was the bulk of the pieces ever broke or sold by retail; that they were sold entirely by commission, sometimes for home consumption and sometimes for exportation; that the door of the warehouse sometimes stood open but in general was kept shut and fastened by a latch, but not so as to prevent its being opened at pleasure on either side: Upon this statement the Court doubted whether it could be called a warehouse, referring to *Howard's case post*, and the prisoner was acquitted of the capital part of the charge.

R. v. *Godfrey*, Leach, 322.

3. The prisoner being indicted on this statute it was proved that the place from whence the goods were stolen was a common warehouse by the water side, where merchants did usually lodge goods intended for exportation until there should be an opportunity of putting them on board, and the Court (Ch. B. Par-

ker and Foster and Birch, Justices,) were of opinion that this was not a case within the statute, for by the word warehouses in the statute are meant not mere repositories for goods, but such places where merchants and other traders keep their goods for sale in the nature of shops and whither customers go to view them.

R. v. *Howard*, Fost. 77.

4. *Money* has been rightly holden not to be within this act, the words being *goods, wares and merchandizes:* for though the word goods may in a large sense take in money, yet being connected with *wares and merchandizes*, the safer construction of so penal a statute will be to confine it to goods *ejusdem generis* goods *exposed to sale*. Fost. 79.

5. The prisoner was indicted for stealing a watch privately in a shop, and it being proved that the watch was sent to the shop for the purpose of being repaired, and was hung in the shew glass of the shop at the time it was stolen, the Court said the meaning of the act of parliament had always been restrained to such goods only as are exposed to sale in shops, and did not extend to mere repositories for goods, and that this shop was not with respect to this watch a place of sale, and accordingly the prisoner was acquitted of the capital part.

R. v. *Stone*, Leach, 375.

6. And a shirt having been left with the master of a shop in order that he might send it to be mended, but in the mean time it was stolen thereout, held not to be within the act, which was made for the benefit of masters of shops, to preserve their own goods which might be left there in the *way of trade*.

O. B. April sessions, 1723.

Leach, 376. *n.*

7. So to steal a coachman's livery great coat which was hung up in the stables seems not to be within the act, for the goods stolen must be such as are proper to and usually kept in the respective places which the act describes.

R. v. *Seas*, Leach, 341.

8. An indictment on 3 W. & M. c. 9. must state by whom the goods or lodgings were let to the prisoner, and for the omission thereof the prisoner was acquitted.

R. v. *Pope*, Leach, 377.

9. An indictment on 3 & 4 W. & M. c. 9. s. 5. stated that the goods stolen were in a certain lodging room in the dwelling house of the said A. B. there situate, let by contract by the said A. B. to the said C. D. and to be used by the said C. D. with the lodging aforesaid; and an objection was taken to the form of it inasmuch as it did not appear upon the face of the indictment that the contract was in existence at the time of the theft committed, for that the indictment only stated that the goods stolen were in a lodging room in the dwelling house of A. B. *there* situate, let by contract by A. B. to C. and to be used by C. with the lodging, but that it did not state that the goods were *then* let to the prisoner, that the word *then* ought to have been inserted between the words *situate* and *let*, and that there was no averment in any part of the indictment by which the want of the word then could be supplied, or from which the existence of the contract at the time could be legally intended. But upon reference to the Judges they all held the indictment to be good, for that every common reader would naturally understand the words "let by contract" to apply to the *lodging room* and not to the *dwelling house*, and that if the words "in the dwelling house of the said A. B." were put in a parenthesis no chasm at all would remain between what went before and followed after, and by that means the clear and natural import of the words would be ascertained.

R. v. *Burnel*, Leach, 668.

10. Where in an indictment on 3 & 4 W. 3. c. 9. it was averred that the goods stolen by the two prisoners

were in a lodging room let by contract to one of them, and it appeared in evidence that the letting was to the *other*, the Court directed both the prisoners to be acquitted.

R. v. *Goddard and Frazer*, Leach, 617.

11. Qu. Whether in an indictment on 3 & 4 W. & M. c. 9. stating that the lodgings were let to the prisoner by A. is supported by evidence that they were let by the wife of A. In this case the prisoner was found not guilty.

R. v. *Pointing*, Leach, 705.

VI. *In the Dwelling House.*

1. If goods above the value of forty shillings be stolen at one time in a dwelling house, but the value of those found in a prisoner's possession do not amount to that value, yet if the jury believe the prisoner stole the rest of the articles they may find him guilty of stealing above the value of forty shillings in a dwelling house.

R. v. *Hamilton and Chesser*, Leach, 389, 390.

2. To bring a case within stat. 12 Ann. c. 17. goods to the amount of forty shillings must be proved to have been stolen at one and the same time, for the several values of different portions of property which have been stolen at different times cannot be added together so as to make an offence capital, they being in fact different and independent acts of stealing.

R. v. *Petrie*, Leach, 329.

3. Nor can a number of petty larcenies be combined so as to constitute one act of grand larceny. *Ibid.*

4. If a wife steal the property of a person above the value of forty shillings in the house of her husband, it is not a stealing within this statute.

R. v. *Gould*, Leach, 257.

5. For her husband's house is her's, and it is apparent the legislature intended that the stealing must be in the house of another. *Ibid.*

6. Therefore for a person to steal goods above the value of forty shillings in *their own house* is not a capital felony.

R. v. *Thompson and M'Daniel*, Leach, 379.

7. To steal a bank note for £20. in a dwelling house is an offence within the above statute, and the prisoner is on conviction thereof ousted of clergy.

R. v. *Dean*, Leach, 798.

8. A bank note feloniously obtained in the house by a lodger from his landlord under pretence of getting it changed is not a capital offence within stat. 12 Ann. c. 7. for that statute was made to protect such property as might be *deposited in the house*, and not that which was *on the person* there.

R. v. *Campbell*, Leach, 642.

9. The prisoner being indicted for stealing goods above the value of forty shillings in the dwelling house of W. H. Bunbury, Esq. and it was found that the house was the invalid office at Chelsea, which is an office under government, that the ground floor of it was used for the purpose of conducting the business of the office, that Mr. B. occupied the whole of the upper part of it, but that the rent and taxes of the whole house were paid by government. The Court (Mr. B. Perryn and Mr. J. Willes) held that this was not the dwelling house of Mr. Bunbury.

R. v. *Peyton*, Leach, 364.

10. To obtain money from the person of another by the practice of ring dropping, although it be so obtained in the dwelling house, is not within the statute.

R. v. *Owen*, Leach, 652.

11. An indictment for robbing in a dwelling house persons being therein and put in fear, must state that the persons were put in fear *by the prisoners.*

R. v. *Etherington*, Leach, 771.

12. But upon such an indictment the prisoner may be acquitted of the capital part of the charge and found guilty of simple larceny.

Ibid.

VII. *On navigable Rivers.*

1. An indictment for stealing goods "in a barge on the *navigable river* Thames" is not supported by evidence that a barge full of deals being navigated down the Thames, being in danger of sinking, part of the cargo was unloaded into a long boat, and both that and the barge were moored along side of each other; that by the efflux of the tide they were left aground, and in the night the long boat with the deals which were above the value of forty shillings were stolen; for this larceny could not have been committed on the navigable river Thames but from the banks of one of its *creeks*.

R. v. *Pike*, Leach, 357.

2. But it should seem that the above would have been within that branch of the act which makes it a capital offence also to steal above the value of forty shillings in any *creek belonging* to any navigable river, &c.

Ibid.

3. Dollars and guineas being money, are not within the description of either goods, wares or merchandizes mentioned in the stat. 24 G. 2. c. 45.

R. v. *Leigh*, Leach, 63.

4. Portugal coin not current here by proclamation but commonly passing, is money, and therefore not within the act.

Leach, 63 *n.* Fost. 79.

5. If a corn factor purchase corn on board a vessel lying in the Thames, and his servant goes on board the vessel and contrives to have a certain portion of the corn put into sacks by the labourers on board the ship, desiring them to carry the account of the corn so taken away by him to the score, and not to make a separate account of it, and then sends away such corn by another hand and sells it, he may be capitally indicted for stealing the property of the corn factor although the corn was never removed out of the vessel into the prosecutor's lighter.

R. v. *Abrahat*, Leach, 960.

6. So if a corn factor purchase corn and send his servant in his lighter to fetch it from the vessel to his wharf and five quarters of it are by the direction of the servant put in the cabin of the barge in sacks, and the rest loaded in the barge in gross bulk, and the servant take away and convert the five quarters so placed in sacks before it comes into the actual possession of his master, it is larceny; for being laden on board the lighter it is sufficiently in the possession of the master to enable him to maintain an indictment for stealing it.

R. v. *Spears*, Leach, 962.

7. N. B. These two cases appear to have arisen out of the same transaction, though reported with some slight difference in the circumstances.

VIII. *Of Property fixed to the Freehold.*

1. "A church" is "a building" within the general words "or to any building whatsoever" in 4 G. 2. c. 32.

R. v. *Ilickman & Dyer.*

2. And it seems that an indictment on that statute is good without stating the person in whom the property or the freehold of the church by law resides. In the above case the indictment laid it to be 1st. the property of C. C. the vicar, 2nd. the property of J. B. and R. M. the churchwardens, and 3rd. of the inhabitants and parishioners of the parish.

Ibid. and see *R.* v. *Isley*, Leach, 360. S. P.

3. A person who procures possession of a house under a *written agreement* between him and the landlord *for a lease* for twenty-one years, is by stealing the lead affixed to such house guilty of felony within stat. 4 G. 2. c. 32. if the jury find that he had fraudulently entered into an agreement for the purpose of getting possession of the house in order to be the better enabled to steal the fixtures.

R. v. *Munday*, Leach, 991.

4. The prisoner being indicted under stat. 4 G. 2. c. 32. and 21 G. 3. c. 68. for stealing *a window casement*

made of iron, lead and glass fixed to a certain building, he having no title &c. the Court held that the words in the latter act are to be taken as *substantive nouns* and not as *descriptive* of the *sorts of fixtures* which the legislature intended to protect, and upon this direction the prisoner was acquitted.

R. v. *Senior*, Leach. 559.

LIBEL.

I. *What shall be deemed a Libel.*
II. *Evidence.*
III. *Justification.*
IV. *Indictment.*
V. *New Trial.*
VI. *Judgment.*

I. *What shall be deemed a Libel.*

1. It is a libel to write a letter to a third person against a female whom he intended to marry; and the justices in sessions have jurisdiction thereof.

R. v. *Summers*, 3 Salk. 194.

2. The Court of K. B. refused to grant a criminal information against a bookseller as for a libel in printing a true but unauthorised copy of a report of the House of Commons though the report reflected on the character of an individual.

R. v. *J. Wright*, 8 T. R. 293.

3. It is neither the subject of a criminal prosecution nor of an action, to publish a true account of the proceedings in parliament or of the courts of justice.

R. v. *J. Wright*, 8 T. R. 298.

4. An obscene book is punishable as a libel.

R. v. *Curl*, Stra. 789.

The case of Q. v. *Read*, Fost. 98. is not now to be considered as law.

Ibid.

5. The Court refused to grant an information for a libel, the truth of which was not denied by the prosecutor, but left him the ordinary remedy by action or indictment.

R. v. *Bickerton*, Stra. 498.

6. The Court granted an information against the printer of a newspaper for publishing a ludicrous paragraph describing the Earl of Clanricarde's supposed marriage with an actress at Dublin, the Earl then being a married man.

R. v. *Kinnersley*, Bl. Rep. 294.

7. A person having been convicted of blasphemous discourses on the miracles of our Saviour, and attempting to move in arrest of judgment, the Court declared they would not suffer it to be debated whether to write against christianity *in general* was not an offence punishable in the temporal courts at common law, but they did not intend to include disputes between learned men upon particular controverted points.

R. v. *Woolston*, Stra. 834.

8. A member of the House of Commons may be convicted in this court upon an indictment for a libel in publishing in a newspaper the report of a speech made by him in that house, if it contain libellous matter, although the publication be a correct report of such speech, and be made in consequence of an incorrect publication having appeared in that and other newspapers.

R. v. *Creevey, Esq. M. P.* 1 Mau. & Sel. Rep. 273.

II. *Evidence.*

1. On the trial of an indictment for a libel, the only questions for the consideration of the jury are the fact of publishing, and the truth of the *innuendos*. Whether the subject matter be or be not a libel is a question of law for the consideration of the Court.

R. v. *the Dean of St. Asaph*, 3 T. R. 428. *n.* and *R.* v. *Withers*, 3 T. R. 428. [But see stat. 32 G. 3. c. 60; and the opinion of Kenyon Ch. J. in *R.* v. *Holt*, 5 T. R. 436.]

2. It is not competent to a defendant, charged with having published a libel, to prove that a paper, similar to that for the publication of which he is prosecuted, was published on a

former occasion by other persons, who have never been prosecuted for it.

R. v. *Holt*, 5 T. R. 436.

3. Proof that the defendant gave a bond to the stamp-office for the duties on the advertisements in a newspaper under the stat. 29 G. 3. c. 50 s. 10. and had occasionally applied at the stamp-office respecting the duties, is evidence that he is the publisher.

4 T. R. 126.

4. Proof of words spoken *to* a person will not support an indictment, charging that the defendant spoke them *of* such a person.

R. v. *Berry*, 4 T. R. 217.

5. The publisher of a weekly register received an anonymous letter tendering certain information concerning Ireland and desiring to know to whom the letter should be directed, to which an answer was returned in the register: after which two letters were received in the same hand-writing, directed as mentioned, and having the Irish post mark on the envelopes, which two letters were proved to be the hand-writing of the defendant, and the letters themselves containing expressions indicative of the writer's having sent them to the publisher of the register in Middlesex for publication. This was held to be sufficient evidence for the jury to find a publication in Middlesex by the procurement of the defendant.

R. v. *Johnson*, 7 E. R. 65.

6. The witness for the crown, who produced the libel, swore that it was shewn to the defendant who owned himself the author of the book, errors of press and some small variations excepted; and it was objected that it could not be read, because the confession was not absolute: but the Ch. J. allowed it to be read saying he would put it upon the defendant to shew that there were material variations.

R. v. *Hall*, Stra. 416.

III. *Justification.*

1. There may be an implied justification of a libel, or of slander, from the occasion (as if read in a judicial proceeding) as well as on account of the subject-matter. 1 T. R. 110.

2. It is libellous to publish a highly coloured account of judicial proceedings, mixed with the party's own observations and conclusions upon what passed in court, which contained an insinuation that the plaintiff had committed *perjury;* and it is no justification to such insinuation of perjury against the plaintiff (who had sworn to an assault by A. B. on him), that it *did appear* (which was the suggestion in the libel) *from the testimony of every person in the room &c. except the plaintiff*, that no violence had been used by A. B. &c. for *non constat* thereby, that what the plaintiff swore was false. Neither is it sufficient in a justification to such a libel, where the extraneous matter was so mingled with the judicial account as to make it uncertain whether it could be separated, to justify the publication by general reference to *such parts of the supposed libel as purport to contain an account of the trial &c.* and that the *said parts* contain a just and faithful account of the trial &c.

Stiles v. *Nokes*, 7 E. R. 493.

3. A plea justifying a libel on the grounds that the East India Company ordered the defendant as governor in council, to erase the prosecutor's name from the Army List of the Presidency, does not shew a sufficient justification for publishing the cause of dismissal.

Oliver v. *Bentinck*, (Ld. W. C.) 1 W. P. T. 456.

IV. *Indictment.*

1. A defendant may be charged upon one indictment with publishing a libel upon two persons if it be but one offence.

R. v. *Benfield and Saunders*, Burr. Rep. 980.

2. An indictment or information for a libel need not charge the offence to-

have been committed *vi et armis*, or alledge that the libellous matter is false. R. v. *Burke*, 7 T. R. 4.

3. Several defendants may be joined in one and the same indictment for a libel, if the offence wholly arises from such a joint act as is criminal in itself; as where divers joined in singing libellous and scandalous matter in the public street at a father's door, with intent to discredit him and his children, and whether it be two songs or one, or a first and second part of the same song, or separate stanzas, one on one person, and another on another, yet it is one entire offence: and the more there are that join in it the greater is the offence.

R. v. *Benfield and Saunders*, Burr. Rep. 980.

4. Upon an information against the defendant for a libel, for that he &c. wickedly, maliciously and seditiously did write and publish a certain false, scandalous, and seditious libel OF AND CONCERNING *his majesty's government and the employment of his troops*, according to the tenor and effect following (setting forth the libel *verbatim*) the words of and concerning are a *sufficient introduction* of the *matter* contained in the libel, and a sufficient averment that it was written *of and concerning the king's government and the employment of his troops*.

R. v. *Horne*, Cowp. 672.

5. An indictment for a libel must set forth who the person libelled was, and therefore where it charges it to be upon persons to the jurors unknown, it is insufficient, even after a verdict of guilty.

R. v. *Nutt and Orme*, Ld. Raym. 486. 3 Salk. 224. S. C. by the name of *R.* v. *Alm and Nott*.

6. The whole libel need not be set forth in the indictment, but if any part qualifies the rest it may be given in evidence.

R. v. *Beare*, 1 Ld. Raym. 414. 1 Salk. 324. 2 Salk. 417. 3 Salk. 226.

7. Where a defendant was indicted for that he composed, made, wrote, and industriously circulated many false and scandalous libels, and the jury as to the writing and altering the said libels find him guilty *prout in indictamento superius supponitur* and as to all other things charged in the indictment *præter scriptionem et collectionem* they find him not guilty; the Court held that to be a good verdict. *Ibid.*

8. For when a defendant is found guilty of writing a libel it must be intended to be *an original*, for a *copy* would not be given in evidence. *Ibid.*

9. And upon an objection that the defendant being found guilty of collecting and writing and not of making and composing, the verdict was repugnant or an acquittal; the Court said making is the genus and composing and contriving is one species; writing a second species, and procuring to be written a third species, so that not finding him guilty of all but of writing only, is not finding him guilty of any species of making, but writing. *Ibid.*

10. An allegation that in the libel was contained *juxta tenorem sequentem*, imports that the words afterwards set out in the indictment were the words used in the libel. *Ibid.*

11. To say *ad effectum sequentum* would not be sufficient. *Ibid.*

12. An indictment for publishing libellous matter, reflecting on the memory of a dead person, not alledging that it was done with a design to bring contempt on the family of the deceased, to stir up the hatred of the king's subjects against them, or to excite his relations to a breach of the peace, cannot be supported.

R. v. *Topham*, 4 T. R. 126.

V. *New Trial.*

1. The defendant having been acquitted upon an indictment for a libel, a new trial was moved for but denied, and the Court said anciently it was never done in criminal cases where defendants were acquitted, but that latterly where verdicts had been obtained by *fraud* or trick, as stealing away witnesses &c. it was done,

but never yet merely upon the reasons that the verdict was against evidence.

R. v. *Bear*, 2 Salk. 646.
1 Ld. Raym. 414.

2. Upon an information against a defendant for printing and publishing a libel *with a malicious and criminal intention*, the jury having returned a verdict of *guilty of the printing and publishing* ONLY, the Court awarded a *venire facias de novo*.

R. v. *Woodfall*, Burr. Rep. 2661.

VI. *Judgment.*

1. The defendant being convicted of a scandalous libel, judgment was given against him to go to all the courts in Westminster Hall with a paper in his hat; in Chancery he behaved himself imprudently and justified his offence, for which reason the Court increased his punishment by imprisonment.

Anon. 1 Salk. 400.

2. A defendant convicted on an information of a blasphemous libel, was sentenced to be imprisoned in Newgate for a month, to stand twice in the pillory with a paper on his head inscribed *blasphemy*, to be sent to hard labour for a year, to pay a fine of 6*s.* 8*d.* and to find security himself in 100*l.* and two sureties in 50*l.* each during life.

R. v. *Annet*, Blackst. Rep. 395.

LUNATIC.

1. The traverser of an inquisition of lunacy is to be considered as a defendant.

R. v. *Roberts*, Stra. 1208.

2. Upon such a traverse therefore the prosecutor of the commission has a right to make up the record and carry it down for trial. *Ibid.*

3. Where a new trial was had upon such a commission, in the absence of the traverser who was absent through illness, the Court on affidavit of that fact granted a new trial upon payment of costs, and because the Lord Chancellor and the former jury both had an inspection which might be of great use to a second jury, who otherwise would be left to judge upon less evidence than the others had had.

R. v. *Roberts*, Stra. 1208.

4. The Court afterwards upon application of the traverser, ordered it to be tried at the bar by a jury of the county where the former inquisition was taken. *Ibid.*

MANDAMUS.

1. The Court will grant a peremptory *mandamus* to justices of the peace to grant a warrant to bring the balance of the late overseers' accounts, which the vestry had ordered to be detained and laid out to sue for some charity money, which fact was returned by the justices as their reason for not granting the warrant.

R. v. *Somersetshire Justices*, Stra. 992.

2. For the stat. 43 Eliz. c. 2. says the balance shall be paid over to the new overseers under a penalty, and it is not in the power of the vestry to dispense with the statute. *Ibid.*

3. A parish clerk is a *temporal* officer, and if removed by the minister without a sufficient cause the Court of K. B. will grant a *mandamus* to restore him.

R. v. *Warren*, Cowp. 370.

4. The return to a *mandamus* is good, if it pursues the suggestions of the writ.

R. v. *Penrice (Sir H.)* Stra. 1235.

MAYHEM.

1. To bring an offender within 22 and 23 Car. 2. c. 1. the *lying in wait* must be proved, and therefore where it appeared in evidence that the prosecutor discovered the prisoner in a field belonging to his master about midnight pulling up turnips, that the prosecutor spoke to the prisoner, who instead of making any reply cut him on the nose and other parts of the body with a sharp instrument, the Judges held this not to be a sufficient evidence of lying

in wait to bring the case within the statute.

R. v. *Tickner*, Leach, 222.

2. A husband cutting his wife's throat on his return home and making thereby a wound three inches in length across her neck, is not a maiming and disfiguring *by lying in wait* within the statute.

R. v. *Lee*, Leach, 61.

3. A large transverse wound across the nose so wide and deep as to render the bone visible is *a slitting of the nose* within the Coventry Act, although the nostril is not perforated.

R. v. *Carrol*, Leach, 66.

4. To follow an accomplice in picking pockets with intent to maim any person who shall apprehend him, appears to be *a lying in wait* within the stat. *Ibid.*

5. The prisoner being tried on this act, the evidence against him was, that the prosecutor was driving his cart loaded with sugar down Holborn Hill, when he was suddenly struck on the face by some one, and several others surrounded him throwing great stones at him; that he defended himself till he got to Fleet Market, but was then surrounded by encreased numbers who stabbed him in several parts of the body while standing endeavouring to defend his head from the blows, but without striking any one, some person among the assailants called out repeatedly "damn you, where are your knives," upon which the prisoner who was one of the gang made a sweeping stroke at the prosecutor with a *large knife*, which slit his nose and cut his cheek and ear severely. The prosecutor could assign no other reason for this cruel treatment, except that it was intended by way of revenge on him for having detected and beat off some thieves, who had made an attempt to rob his cart near the same place on the preceding evening, for it could not be for the purpose of robbing the cart at the time the prosecutor was cut, for none of the goods were taken away. The Court said that to constitute the offence it must be committed with a certain degree of preparation, watching an opportunity for the purpose and with a degree of deliberation that may mark a malicious intention and a wilful design; that the expression, where are your knives, was explanatory of the design of the gang, for if that was the *signal* that was to be given to them and the prisoner drew his knife and *took the first opportunity* of giving the prosecutor the cut which he received that was *a lying in wait* for him, for it was not necessary that a man should place himself in any particular concealment and then rush out of his lurking place to do it, for if he has a purpose in his mind to do such a mischief and deliberately watches for an opportunity to do it, he lies in wait. The jury found the prisoner guilty.

R. v. *Thomas Mills*, Leach, 294.

MONSTRANS DE DROIT.

If a person who brings a *monstrans de droit* on an inquisition finding the forfeiture of an office fails in his title, he cannot mend his case by exceptions to the inquisition taken as *amicus curia*, though by those exceptions it appears that the crown has no right, or that a stranger has right, and therefore the office was not forfeited; for the party who was a *monstrans de droit* is a plaintiff and may be nonsuit.

R. v. *Mason*, 2 Salk. 447.

NAVAL STORES.

1. A person convicted of unlawfully having in his custody or concealing naval stores, may in the discretion of the Court, be sentenced either to receive corporal punishment under 17 G. 2. c. 40. s. 10. or to pay a penalty under 9 & 10 W. 3. c. 41.

R. v. *Bland*, Leach, 678.

2. One convicted upon the stat. 9 & 10 W. 3. c. 41. s. 2. of having unlawfully in his possession or concealing the king's naval stores, cannot

since the stat. 39 & 40 Geo. 3. c. 89. s. 2. be sentenced to hard labour.

R. v. *Bridges*, 8 E. R. 53.

3. The forfeiture of 200*l.* inflicted by 9 & 10 W. 3. c. 41. on persons other than contractors having naval stores in their possession accrues by the conviction upon an *indictment* for that offence.

R. v. *Harman*, Ld. Raym. 1105.

NUISANCE.

1. An indictment for a nuisance, (by steeping stinking skins in water,) laying it to be committed *near the highway*, and also near *several dwelling houses*, &c. is sufficient.

R. v. *Pappineau*, Stra. 686.

2. Such a nuisance being temporary and not permanent, there need not, (and indeed how could there) be judgment to abate it as well as a fine.

3. An indictment for a nuisance for erecting buildings and making fires which sent forth noisome offensive and stinking smokes, and making great quantities of noisome, offensive and stinking liquors, *near* to the king's common highway, and *near* to the dwelling houses of several of the inhabitants, whereby the air was impregnated with noisome and offensive stinks and smells, to the common nuisance of persons inhabiting or travelling *near* the said highway, &c. held good.

R. v. *White and Ward*, Burr. Rep. 333.

4. It is sufficient if a nuisance be laid generally *in a parish*, and this is the accustomed manner; for the very existence of the nuisance depends upon the number of houses and concourse of people, and *this is a matter of fact* to be judged of by a jury. *Ibid.*

5. To constitute a nuisance it is not necessary that the smell should be *unwholesome* it is enough if it renders the enjoyment of life and property uncomfortable. *Ibid.*

6. The word "*noxious*" not only means *hurtful and offensive to the smell*, but it is also the translation of the *very* TECHNICAL *term* "*nocivus*," and has been always used for it, ever since the act for the proceedings being in English. *Ibid.*

7. If one build a house so near to mine that it stops my lights or shoots the water upon my house, or is in any other way a nuisance to me, I may enter upon the owner's soil and pull it down.

R. v. *Rosewell*, 2 Salk. 459.

8. The building of a house in a larger manner than it was before, whereby the street *became darker*, is not a public nuisance by reason of the darkening.

R. v. *Webb*, 1 Ld. Raym. 737.

9. Stopping lights is a nuisance, but stopping a prospect is not.

Arnold v. *Jefferson*, 3 Salk. 247.

10. It is a nuisance to make great noises in the night with a speaking trumpet, to the disturbance of the neighbourhood, and this defendant having been convicted thereof by indictment was fined 5*l.*

R. v. *Smith*, Stra. 703.

11. A waggoner, occupying one side of a public street in a city, before his warehouses, in loading and unloading his waggons for several hours at a time, both day and night, and having one waggon at least usually standing before his warehouses, so that no carriage could pass on that side of the street, and sometimes even foot passengers were incommoded by cumbrous goods lying on the ground ready for loading, is indictable for a public nuisance, though there were room for two carriages to pass on the opposite side of the street.

R. v. *Russell*, 6 E. R. 427.

12. Indictment against a tenant at will of a house adjoining to a public bridge, which house he ought to repair *ratione tenuræ*, but that he permitted it to be so much out of repair that it was ready to fall upon passengers, held good.

R. v. *Watson*, Ld. Raym. 856.

13. The matter of an indictment for not repairing a way is not put an end to

by the defendants submitting and being fined, but writs of *distringas* shall be awarded *ad infinitum*, till the Court is certified that the way is repaired.

R. v. *Cluworth Inhab.* 1 Salk. 358.

14. An information against a common carrier, setting forth that no waggon ought to carry more than 2000 weight, and that the defendant used a waggon with four wheels in which he carried 3000 or 4000 weight at one time, by which he spoiled the way leading fram Oxford to London, viz. at Lobb Lane, in the parish of Hosely, held good, though there was no particular measure expressed how much of the way was spoiled, for the nuisance was alledged for all the way from Oxford to London, and Lobb Lane only mentioned for a venue, and besides it was the excessive weight which he carried that made the nuisance.

3 Salk. 183.

15. Indictment against a defendant for that he did keep a common ill governed and disorderly house, and in the said house for his lucre &c. certain persons of ill name &c. to frequent and come together did cause and procure, and the said persons in the said house to remain, *fighting of cocks, boxing, playing at cudgels and misbehaving themselves* did permit, held good.

R. v. *Higginson*, Burr. Rep. 1233.

16. If a person be only a lodger, and have but a siugle room, yet if she make use of it to accommodate people in the way of a bawdy house, it will be a keeping of a bawdy house as much as if she had a whole house.

R. v. *Pierson*, Ld. Raym. 1197. Salk. 382.

17. Husband and wife may be jointly convicted of keeping a common bawdy house.

R. v. *Williams*, 1 Salk. 383.

18. For the crime is joint and several, and husband and wife may commit trespass, murder, treason &c. *Ibid.*

19. The keeping of the house is not to be understood of having or renting in point of property, but it is the governing and managing the house in such a disorderly manner as to be a nuisance. *Ibid.*

20. An indictment cannot be maintained against a person for being a common bawd, and procuring men and women to meet together to commit fornication, but she should have been indicted for keeping a common bawdy house.

R. v. *Pierson*, Ld. Raym. 1197. Salk, 382.

21. For a bare solicitation of chastity is only cognizable in the ecclesiastical courts. *Ibid.*

22. On an indictment for a nuisance in erecting a wall across a road (not for *continuing* the nuisance,) it is not necessary to adjudge that the nuisance be abated.

R. v. *the Justices of the W. R. of Yorkshire*, 7 T. R. 467. and *R.* v. *Stead*, 8 T. R. 143.

23. But where it is stated in the indictment to be an existing nuisance, there must be judgment to abate it.

8 T. R. 143.

24. If the Court be satisfied that a nuisance indicted is already effectually abated, before judgment is prayed upon the indictment, they will not in their discretion give judgment to abate it. And they refused to give such judgment upon an indictment for an obstruction in a public highway, which highway, after the conviction of the defendant, was regularly turned by an order of magistrates, and a certificate obtained that the new way was fit for the passage of the public, and on affidavits that so much of the old way indicted as was still retained was freed from all obstruction.

R. v. *Incledon*, 13 E. R. 164.

25. Judgment upon an indictment for being a common scold reversed, because it was *rixa* instead of *rixatrix*.

R. v. *Saxfield*, Ld. Raym. 1094.

OATHS, (UNLAWFULLY ADMINISTERING.)

The unlawful administering by any associated body of men of an oath to any person, purporting to bind him not to reveal or discover such unlawful combination or conspiracy, nor any illegal act done by them &c. is felony within the stat. 37 G. 3. c. 123. though the object of such an association was a conspiracy to raise wages and make regulations in a certain trade, and not to stir up mutiny or sedition.

R. v. *G. Marks*, 3 E. R. 157.

OFFENDERS (EXPENSES OF CONVEYING.)

If a defendant convicted in B. R. receive sentence to be set on the pillory *in a different county*, the prosecutor is not *bound* to pay the tipstaff any *fee*, or even the necessary expenses of carrying such offender thither.

R. v. *Cholsey*, Cowp. 726.

OFFICER.

1. It seems that a clerk of assize has not a lien in the records in his custody for his fees.

   R. v. *Bury*, Leach, 239.

2. And if he refuse to deliver a record on the ground that he had not been paid his fees for drawing, engrossing &c. the Court of K. B. will grant a rule to shew cause why an attachment should not issue against him.

   Ibid.

   Lord Mansfield in the above case said he should be very sorry to determine that a clerk of assize had a lien on the records of the court for his fees, for that he foresaw great inconvenience from such a doctrine, it was therefore referred to the Master to report what was due.

3. If a clerk of the peace in drawing an indictment for perjury unnecessarily state all the continuances in the former prosecution, which is rendered unnecessary by 23 G. 2. c. 11. s. 1. the Court of K. B. will refer the record to the Master to see what part was unnecessary; and the Court made an order that the clerk of the peace should pay the expense incurred by such unnecessary part.

   Leach, 239. *n.*

4. The summoning bailiff of Middlesex was fined 200*l.* and it was recommended to the sheriff to discharge him for receiving money from various individuals by way of Christmas box, though he stated he had never acted with partiality one way or the other.

   R. v. *Whitaker*, Cowp. 752.

OUTLAWRY.

1. A person attainted upon an information for a misdemeanor cannot be fined, because in misdemeanors the outlawry does not enure as a conviction for the offence, as in treason or felony, but as a conviction for the contempt for not answering, which contempt is punished by the loss of his goods and chattels, and if defendant might be fined upon the outlawry he must be fined again upon the principal judgment.

   R. v. *Tippin*, 2 Salk. 494.

2. If one be outlawed by process on an information, and comes in and reverses the outlawry, he must plead *instanter* to the information.

   R. v. *Hill*, 1 Salk. 371.

3. Outlawry for high treason reversed on the defendant's coming in within the year, and surrendering himself to the Chief Justice, though it was not a voluntary surrender but a compulsory recaption after the defendant's escape from prison, which he had effected *before being indicted for the treason.*

   R. v. *Johnson*, Stra. 824.

4. And the Court said it would be very hard, when the Court had given a man a year to come in that by taking him up before the year was out the benefit of the law should be

taken from him, if he would bring himself within the description of it.
Ibid.

5. A defendant may plead *ore tenus* to an outlawry, that he was beyond sea at the time it was pronounced, and to this the Attorney General may reply *ore tenus* that the defendant was within the realm, and traverse that he was beyond sea according to his plea, and offer issue upon it; and thereupon the defendant may say that he joins issue, and then the jury shall come *instanter* to try it.
R. v. *Johnson*, Stra. 825.

6. A defendant surrendering himself within the year upon an outlawry, cannot plead specially his being at sea, and over to the felony, in the same plea, because after his plea there must be 15 days between the teste and return of the *venire*, it being an indictment removed by *certiorari*.
R. v. *Johnson*, Stra. 825.

7. If it is stated in the return to the *exigent* that the defendant was exacted by the sheriff "at my county court, held at the Three Tuns, in BROOK STREET, *near Holborn, in the county of Middlesex*," it is insufficient, for after the words *at my county court* should be added the *name* of the county, and after the word *held* should be added "*for the county of* ———." Whereas here the sheriff only says "at my county court," without adding of Middlesex, and he says, "held at the house," &c. without adding the words "for the County of Middlesex" after the word *held*; and for want of these technical words the outlawry in this case was REVERSED.
R. v. *Wilkes*, Burr. Rep. 2527, 2564.

8. In outlawry the *second capias* ought to have three or four months between the *teste* and *return*, if there be only *fifteen days* it is bad; for the stat. 8 H. 6. c. 10. is express that it shall be returnable *three* months after where the counties are holden *from month* to *month*, and *four* months after where the counties are holden from six weeks to six weeks.
R. v. *Davis*, Burr. Rep. 638.

9. The stat. 10 H. 6. c. 6. confirms the former act, and extends it to indictments removed by *certiorari*.
Ibid.

10. Where the writ of proclamation is *tested* and *returned* on the same day it is bad, for this writ is founded on stat. 31 Eliz. c. 3. which gives it in personal actions, and directs the particular manner &c. and to be of the *same* teste and return with the *exigent*, and the stat. 4 & 5 W. & M. c. 22. s. 4. extends this writ of proclamation to criminal cases as well as civil, and directs it to be delivered to the sheriff *three months* before the return.
R. v. *Davis*, Burr. Rep. 640.

11. An outlawry cannot be avoided for error upon *motion*, but only by *writ of error*.
Ibid.

12. If an *exigent* be in London, the outlawry must not be returned to be pronounced *by Mr. K. the coroner*, for the Lord Mayor is perpetual coroner in London, *and the Recorder is to pronounce it*.
R. v. *Davis*, Burr. Rep. 639.

13. The stat. 25 Ed. 3. stat. 5. c. 14. does not apply to a court of oyer and terminer and gaol delivery.
4 T. R. 521.

14. If it appear on the record that the writ of proclamation was delivered to the sheriff three months before the return of it, it is sufficient though it be not so expressly alledged.
4 T. R. 521.

15. The writ of proclamation required the sheriff to proclaim the parties in *open court in the sheriff's county* (not saying county court,) and held good.
4 T. R. 521.

16. The names of the coroners need not be subscribed to the judgment of outlawry; if it appear on the record that the judgment of outlawry was given by them it is sufficient.
4 T. R. 521.

17. The sheriff need not alledge in his return to the writ of proclamation, that "the persons proclaiming did not appear and render them-

selves," though he must in his return to the exigent.
4 T. R. 521.

18. It need not appear on a record of outlawry that the *capias* and exigent were *sealed* by the justices of *oyer* and *terminer* &c.
4 T. R. 521.

19. The sheriff must state, in his return to the writ of exigent, the day and year of each exaction; stating that on such a day *in the 30th year of the reign*, he exacted the defendant a third time; that afterwards on such a day (omitting the year) he exacted him a fourth time; and that *afterwards*, on such a day *in the 30th year aforesaid*, he exacted him a fifth time is insufficient, and a good ground for reversing the outlawry.
R. v. *Almon (in error,)* 5 T. R. 202.

20. It need not be stated in express terms on a record of a judgment of outlawry that a writ of *capias* issued against the defendant; it is sufficient if it appear "that the sheriff was commanded *to take* the defendant," &c.
R. v. *S. Perry*, 6 T. R. 573.

21. Neither is it necessary in stating every writ to repeat the day and year when each was issued: it will suffice if it appear by referring to the preceding parts of the record; as if, after stating that the *capias* was returned on such a day, it proceeded thus, "*Whereupon* the exigent was awarded;" "whereupon" referring to the day when the *capias* was returned.
6 T. R. 573.

22. If one exigent be awarded against the principal and accessary together, it is error only as to the latter.
4 T. R. 521.

23. In a record of outlawry it appeared by the writ of proclamation and the return to it, that the prisoners were required to *render themselves to the sheriff so that he might have their bodies before the justices, &c.* at the return of the writ; and held good.
R. v. *Yandell*, 4 T. R. 521.

24. Outlawry in felony reversed because it appeared on the writ of proclamation and the return to it that the person indicted was outlawed after a day had been given him in court, and before such day arrived.
Barrington v. *the King (in error)*.
3 T. R. 499.

25. A person outlawed on an indictment for sheep-stealing is ousted of clergy by 14 G. 2. c. 6. s. 1.: "*outlawry*" being a "*conviction*" within the meaning of that statute.
4 T. R. 521.

26. The writ of *capias utl.* and the sheriff's return to it, ought to be filed with the clerk of the exigents.
Reynolds v. *Adams*, 3 T. R. 578.

PARDON.

1. A conviction for barratry renders a man infamous, and incapable of being a witness, but a *general* pardon will restore him.
R. v. *Weedon & al.* 3 Salk. 264.

2. The difference between the effects of the king's *special* pardon and a general one is this,—wherever the *disability* is part of the judgment by act of parliament, as in conviction of *perjury upon the statute*, there the *king's pardon* cannot remove that disability but a *general pardon** may: but where the disability is only consequential, as upon an attainder, and no part of the judgment, there the king's pardon will take it away.
R. v. *Weedon & al.* 3 Salk. 264.

3. If a man attainted of felony be pardoned on condition of transporting himself within a limited time, the Court will not permit his creditors to charge him with civil actions; for that would have the effect of defeating the pardon, by rendering the party incapable of performing the condition of it, and there is no reason why the pardon should put the creditors into a better condition than they would have been without it, to the prejudice of

* Viz. by act of parliament.

the party, and the pardon was given for his benefit, and not for that of the creditors.

R. v. *Foxworthy*, 2 Ld. Raym, 848. 2 Salk. 500.

4. Where a general pardon came out between the time of a prisoner pleading not guilty and his trial, but he neglected taking advantage of it on his arraignment, and was afterwards convicted of the offence, yet the Court of K. B. allowed him the benefit of the act of grace.

R. v. *Haines*, Leach, 47.

5. And on allowing such pardon the Court ordered the prisoner to pay the prosecutor his full costs out of pocket. *Ibid.*

6. A defendant who had pleaded *not guilty* to an indictment for high treason having procured a pardon, was brought to the bar of K. B. and by consent of the attorney general waived his former plea and confessed the indictment, and thereupon knelt and pleaded the pardon under the great seal, which was delivered into court and read, and being on condition to transport himself, and to give security to do so, *qual' curia de banco nostro dirigeret;* a question arose whether the Court of K. B. could take the security, and was held they could, for this description was not confined to C. B. as if it had been *curia nostra de banco.*

R. v. *Leonard*, Stra. 301.

7. A pardon to a defendant for a misdemeanor need not be pleaded by him *at the bar* nor *upon his knees.*

R. v. *Hales*, Stra. Rep. 816.

8. The Court of K. B. will not require a person who pleads a pardon for murder to give sureties for good behaviour under 5 & 6 W. 3. c. 13. unless he appears to be a person of *ill fame.*

R. v. *Chetwynd*, Stra. 1203.

PEERESS.

By stat. 1 Ed. 6. c. 12. s. 14. a peer convicted of a clergyable offence is entitled to his immediate discharge without reading or burning in the hand, or being liable to imprisonment, and this privilege given by statute being such as may be enjoyed by a *peeress* is by operation of law communicated to her and puts her in the same situation as a peer. The consequence of which is that a peeress convicted of a clergyable felony praying the benefit of this stat. is not only excused from capital punishment but ought to be immediately discharged without being burnt in the hand or liable to any imprisonment.

R. v. *Duchess of Kingston*, Leach, 175.

PENAL ACTIONS.

1. All informations and popular actions brought on penal statutes made before 21 Jac. 1. c. 4. must be laid, brought and prosecuted in the county where the fact was done, and therefore an information by the Attorney General will not lie on stat. 5 & 6 Ed. 6. c. 14. s. 9. (for having bought live cattle and sold them again not having depastured the certain time &c., in the Court of K. B., for that offence committed in the county of Norfolk.

R. v. *Gall*, 1 Ld. Raym. 370. 1 Salk. 372. 3 Salk. 300.

2. The stat. 21 Jac. 1. c. 4. does not extend to any offence created since that statute.

R. v. *Gall*, 1 Ld. Raym. 370. 1 Salk. 372. 3 Salk. 200.

3. Debt lies upon this stat. 1 Ld. Raym. 373. *n.*

PENAL STATUTES.

1. Debt in B. R. does not lie on a penal stat. made before 21 Jac. 1. *Hicks's* case, 1 Salk. 373.

2. *Secus* on penal statutes passed since. *Ibid.*

3. All informations on penal statutes must be brought in the proper county, and therefore an information can be brought in B. R. under

stat. 5 Eliz. for exercising a trade in Yorkshire without having served an apprenticeship.

R. v. *Hicks*, 3 Salk. 350.

PERJURY.

1. If perjury relate to justice it is punishable by the statute, but if it relate to a spiritual matter in the Spiritual Court it may be punished there.

Baston v. *Gonch*, 3 Salk. 269.

2. Perjury takes its name from perverting justice, therefore it must be judicial. *Ibid.*

3. The party may either be indicted at common law or upon the statute 5 Eliz. by which the punishment is enlarged but the nature of the offence is not altered: and in many cases an indictment will lie at common law when it will not lie upon the statute, as for instance a man may be indicted at *common law* for a *false affidavit* taken before a *master in chancery* but not upon the statute, for that must be in *a matter* relating to the proof of what was in issue. *Ibid.*

4. So where a witness for the king swears falsely, he cannot be indicted upon the statute but he may at common law. *Ibid.*

5. A false oath taken in a court of requests in a matter concerning lands is not indictable, because the court has no jurisdiction in such cases. *Ibid.*

6. An indictment at the quarter sessions for perjury, at common law, was quashed for want of jurisdiction.

R. v. *Bainton*, Stra. 1088.

7. Where a plaintiff loses his action by a false and perjured witness produced on the part of the defendant, the plaintiff cannot have an action against the witness till he is indicted and convicted, unless it was such a perjury or in such a court that an indictment would not lie.

3 Salk. 270.

8. It seems doubtful whether a false oath taken in Doctor's Commons, by means whereof a marriage license is obtained, is perjury.

R. v. *Alexander*, Leach. 74.

Same point undecided,

R. v. *Woodman*, Leach, 75. *n.*

9. An information for perjury was denied, where it appeared that the alledged perjury was committed in an answer to an unfair question, such as in effect asking a witness whether he was guilty of bribery.

R. v. *Dummer*, 1 Salk. 374.

10. The Court of K. B. refused to grant an information against a clergyman for perjury at his admission to a living, upon affidavit that the presentation was simoniacal, until the clergyman had been convicted of the simony.

R. v. *Lewis*, Stra. 69.

11. A person prosecuting articles of the peace against others, who upon their affidavits in answer appear to have been guilty of gross perjury, was committed by the Court, and the Court also stayed the process against the defendants to the articles.

R. v. *Parnell*, Burr. Rep. 806.

12. A new trial in perjury was moved for by the attorney general at the suit of the king and refused, for the king is no otherwise interested in the indictment than in point of common justice.

Anon. 3 Salk. 362.

13. Judgment of imprisonment, pillory and transportation for perjury.

R. v. *Nucys and Galley*, Bl. Rep. 416.

14. One was indicted in Middlesex for perjury committed in an affidavit; which indictment, after setting out so much of the affidavit as contained the false oath, concluded with a *prout patet* by the affidavit filed in the Court of B. R. at Westminster, &c. and on this he was acquitted; after which he was indicted again *in Middlesex* for the same perjury, with this difference only that the second indictment set out the jurat of the affidavit, in which it was

stated to have been sworn *in London;* which was traversed by an averment that in fact the defendant was so sworn *in Middlesex* and *not in London;* and the Court of K. B. held that he was entitled to plead *autrefois acquit;* for the *jurat* was not conclusive as to the *place* of swearing; and the same evidence as to the real place of swearing the affidavit might have been given under the first as under the second indictment; and therefore the defendant had been once before put in jeopardy for the same offence.

R. v. *Embden*, 9 E. R. 437.

15. The punishment directed by 18 G. 2. c. 18. to be inflicted for perjury in falsely taking the freeholder's oath at the election of a knight of the shire are cumulative on 5 Eliz. c. 9. s. 6. 2 G. 2. c. 25. s. 2. to which the first mentioned statute refers.

R. v. *Price alias Wright*, 6 E. R. 327.

16. Several person cannot be joined in one indictment for perjury, for the crime is in its nature several.

R. v. *Philips & al.* Stra. 921.

17. Where only one witness was produced to prove the defendant guilty of perjury, the Court held it to be insufficient, and that the defendant need not go into his defence.

R. v. *Broughton*, Stra. 1228.

18. In an indictment for perjury at common law the words "falsely, wickedly, maliciously and corruptly" imply "wilful," and it is not necessary therefore to insert the latter word, but on 5 Eliz. c. 9. it must be expressly laid to have been wilfully committed.

R. v. *Cox*, Leach, 82.

19. An indictment for perjury in a cause tried at the assizes is good, although it alledge the oath to have been taken before *one* only of the Judges in the commission, although the names of *both* Judges were as usual inserted in the *nisi prius* record.

R. v. *Alford*, Leach, 179.

20. An indictment of perjury was *quod tacto per se sacro Evangelio falso deposuit*, and held ill, because it was not fully alledged that he was sworn.

9 Salk. 270.

21. So it is bad if it is not alledged that defendant *voluntarie deposuit*. *Ibid.*

22. Or if the oath does not relate to the point in issue*. *Ibid.*

23. In an information for perjury an *inuendo* may explain, but cannot add to, extend, or change, the sense.

R. v. *Greepe*, 1 Ld. Raym. 256. 2 Salk. 513.

24. False evidence to make it perjury must be material. *Ibid.*

25. If upon the informality of the information for perjury the judgment be arrested but yet the defendant appear to have been guilty of wilful and corrupt perjury, the Court will not discharge him of his bail, but will give the informer leave to exhibit a new information. *Ibid.*

26. Upon an indictment for perjury in falsely taking the freeholder's oath at an election *in the name of J. W.* it appearing by competent evidence that the freeholder's oath was administered to a person who polled on the second day of the election by the name of J. W., who swore to his freehold and place of abode, and that there was no such person, and that the defendant voted on the second day and was no freeholder, and some time after boasted that he had *done the trick* and was not paid enough for the *job*, and was afraid he should be *pulled for his bad vote;* and it not appearing that more than one false vote was given on the second day's poll, or that the defendant voted in his own name or in any other than the name of J. W., held that there was sufficient evidence for the jury to presume that the defendant voted *in the name* of J. W. and consequently to find him

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* These indictments were on the statutes.

guilty of the charge as alledged in the indictment.

R. v. *Price, alias Wright,* 6 E. R. 323.

27. Upon an indictment for perjury in an answer in Chancery, it is sufficient to prove that the name subscribed to the answer is the hand writing of the defendant, and that the jurat was subscribed by the master as being sworn before him, without proving the *identity* of the defendant as being the very same person who had signed the answer.

R. v. *Morris,* Leach, 60. Burr. Rep. 1189.

28. And the very reason why the Court of Chancery made a general order that all defendants should *sign* their answers was with the very view to the more easy proof of perjury in answers. Burr. Rep. 1189.

29. A *certiorari* was granted to remove an indictment of perjury from the Old Bailey on the part of the defendant, upon affidavit that he had twice paid costs for not going on to trial, the Judges being gone away; which the Court allowed to be a special reason that distinguished this from the common case where *certioraries* are denied.

R. v. *Morgan,* 2 Stra. 1049.

30. But the Court refused it in a case where defendant was indicted at the Old Bailey for perjury without the consent of the prosecutor.

R. v. *Pusey,* Stra. 716.

31. But granted it in a similar case upon an affidavit that the prosecutor's attorney was under sheriff for Middlesex, and attended the grand jury on finding the bill.

R. v. *Webb,* Stra. 1068.

32. To found an indictment for perjury the requisite circumstances are these: *the oath must be taken in a judicial proceeding before a competent jurisdiction, and it must be material to the question depending and false.*

R. v. *E. Aylett,* 1 T. R. 69.

33. Perjury may be assigned on an affidavit of an attorney of the Court made in answer to a charge exhibited against him in a summary way for having in his possession blank pieces of paper with affidavit stamps, and the signatures of a master extraordinary in Chancery and another person at the bottom of the papers.

R. v. *Crossley,* 7 T. R. 315.

34. It is no objection to such an indictment that it is not stated where the court was holden when the original application was made, or when the rule was made, calling on the defendant to answer the charge; a sufficient *venue* being laid on the act of taking the false oath. 7 T. R. 315.

35. In the indictment there must be an allegation of *time* and *place,* which are sometimes material and necessary to be laid with precision, and sometimes not. 1 T. R. 69.

36. Where time is not material it need not be positively averred, and if under a *videlicet* may be rejected. 1 T. R. 70, 1.

37. It is not necessary to set forth in an indictment for perjury so much of the proceedings of the former trial as will shew the materiality of the question on which the perjury is assigned; it is sufficient to alledge generally that the particular question became a material question. 5 T. R. 318.

38. By stat. 23 G. 2. c. 11. the prosecutor need only set forth in the indictment the substance of the offence charged, and by what court or before whom the oath was taken (averring such court &c. to have competent authority to administer the same), &c. without setting forth the commission or authority of the court &c. 5 T. R. 317.

39. In an indictment for a perjury committed at the admiralty session, where the commission was directed to A., B., and C., and others not named, of whom A., B. and C. were among others *to be one,* the Court will take it to mean that if either of the persons named of the quorum were present, it would be sufficient.

R. v. *Dowlin,* 5 T. R. 311.

40. In such case it is not necessary to set out the commission in the indictment. 5 T. R. 317.

41. But where the prosecutor in perjury undertakes to set out in the indictment more of the proceedings than he need under the stat. 23 G. 2. c. 11. he must set them forth correctly. 5 T. R. 317.

42. Stating that at a court of admiralty session *J. K.* was *in due form of law tried upon a certain indictment then and there depending* against him for murder, and that *at and upon the said trial it then and there became and was made a material question* whether &c. are sufficient averments that the perjury was committed on the trial of J. K. for the murder, and that the question on which the perjury was assigned was material on that trial. 5 T. R. 317.

43. A complaint having been made *ore tenus* by a solicitor before the chancellor in the Court of Chancery, of an arrest in returning home after the hearing of a cause, the indictment stated that "*at and upon the hearing of the said complaint*," the defendant deposed &c.; this is a sufficient averment that the complaint *was heard*. 1 T. R. 70.

44. The complaint of the defendant being that he was taken before he got to his own house in the parish of *St. Martin in the Fields*, *inuendo* his house *in the Haymarket*, in *St. Martin's*, &c. The *inuendo* is only a more particular description of the same house, and good. 1 T. R. 70.

45. The oath being that the defendant was arrested upon the steps of his own door, an *inuendo* that it was the *outer* door is good. 1 T. R. 70.

46. An indictment for perjury assigned on an affidavit sworn before the Court of B. R. need not state nor is it necessary to prove that the affidavit was filed of record, or exhibited to the Court, or in any manner used by the party. 7 T. R. 315.

47. The punishments directed by the statute 18 G. 2. c. 18. to be inflicted upon perjury in falsely taking the freeholder's oath at an election of a knight of the shire, are *cumulative* under the statute 5 Eliz. c. 9. s. 6. and 2 Geo. 2. c. 25. s. 2. to which the first mentioned statute refers.

R. v. *Price*, 6 E. R. 327.

PLEADING.

1. A plea of *autrefois acquit* must set out the record of acquittal precisely, or it is bad.

R. v. *Wildey*, 1 Mau. & Sel. Rep. 183.

2. And this in order to shew that the prisoner was *legitimo modo acquietatus*. *Ibid.*

3. The replication of *nul tiel* returned to a plea of *autrefois acquit* must be engrossed on parchment.

R. v. *Vandercomb and Abbot*, Leach, 826. *n.*

4. But it appears that the attorney-general may make such a replication *ore tenus*.

5. The jury cannot be charged at the same time to try the two issues of *not guilty* and *autrefois acquit*.

R. v. *Roche*, Leach, 160.

6. If A. having killed a person in Spain was there tried and acquitted, and afterwards be indicted here for the same fact, he may plead the acquittal in Spain in bar.

Bull. N. P. 245. cited in Leach, 160.

7. As in the case of Mr. Hutchinson, who had killed Mr. Colson in Portugal and was acquitted there of the murder, and being afterwards apprehended in England for the same fact and committed to Newgate, he was brought into the Court of King's Bench by *habeas corpus*, when he produced an exemplification of the record of his acquittal in Portugal, but the King being very desirous to have him tried here for the same offence, it was referred to the consideration of the Judges, who all agreed that as he had been already acquitted of the charge by the law of Portugal, he could not be tried again for it in England.

Beak v. *Tyrwhit*, 3 Mod. 194. S.C. 1 Show. 6. cited in Leach, 160.

8. *Autrefois acquit* is a plea in bar, and may be pleaded wherever the

party has been acquitted before a court of competent jurisdiction.

Leach, 160. *n.*

9. A prisoner acquitted of forgery, on a variance between the instrument produced in evidence and that recited in the indictment, cannot plead *autrefois acquit* to another indictment for the same offence, the only difference in the indictments being the improper omission of the monosyllable "I" in the first indictment, and the proper insertion of it in the second.

R. v. *Cogan*, Leach, 503.

10. A plea of *autrefois acquit* must plead over to the felony.

R. v. *Vandercomb and Abbot*, Leach, 822.

11. A plea of *autrefois acquit* of a burglary where the larceny is laid as *actually* committed, cannot be pleaded to an indictment for the *same burglary* laid *with intent* to *commit the larceny*, for they are two distinct and different offences.

R. v. *Vandercomb and Abbot*, Leach, 828.

12. *Autrefois convict* may be pleaded by the King in a counter plea to prevent a prisoner who had been before convicted and prayed his clergy, from being allowed it a second time.

R. v. *Scott & al.* Leach, 445.

13. One indicted of mayhem need not be brought to the bar, but his plea may be taken in the office, for life and member is not affected, though the practice has been to draw the indictment in the old form.

R. v. *Haddock*, Stra. 1100.

14. If a party be found guilty of a misdemeanor upon one indictment, and then a second is preferred against him for the same offence under the idea that the former was defective, the Court will not enter judgment for him upon the first before they make him plead to the second, for a man cannot plead over in any case but treason or felony, and not in case of a misdemeanor.

R. v. *Goddard and Carlton*, Lord Raym. 921. 3 Salk. 171.

15. A defendant found guilty upon an indictment for a misdemeanor cannot plead that indictment depending in abatement, but must plead *autrefois convict*.

R. v. *Goddard & Carlton*, Lord Raym. 921. 3 Salk. 171.

16. *Nul tiel parish* is a good plea to an appeal of murder.

Orbet v. *Ward*, 1 Salk. 59.

17. In a counter plea of clergy it is not necessary to set out the *tenor* of the indictment on which the prisoner had before been convicted and allowed his clergy, for the defects in such indictment are *matters of error*, and cannot be taken advantage of on the counter plea.

R. v. *Scott & al.* Leach, 445.

18. To a plea of misnomer the clerk of the arraigns may reply that the prisoner was as well known by one name as the other.

R. v. *Dean*, Leach, 535.

19. The sheriff returned a jury *instanter* to try this issue, and it being found for the crown, the prisoner immediately pleaded over to the felony. *Ibid.*

20. If a defendant plead a dilatory plea to an indictment there must be annexed to it an affidavit of its truth.

R. v. *Grainger*, Burr. Rep. 1617.

21. A peer indicted by his christian and surname may plead the misnomer in abatement.

R. v. *Knollys*, 3 Salk. 242. 1 Ld. Raym. 10. 2 Salk. 509. S. C.

POLYGAMY.

1. An indictment for polygamy will lie notwithstanding the sentence of a spiritual court against a marriage in a suit of jactitation of marriage, and such sentence is not conclusive evidence so as to stop the counsel for the crown from proving the said marriage on the trial of the indictment.

R. v. *Duchess of Kingston*, Leach, 173.

2. But admitting that such sentence were conclusive, the counsel for the crown might be admitted to avoid

the effect of such sentence by proving the same to have been obtained by fraud or coersion. *Ibid.*

3. A peeress convicted of polygamy shall on praying the benefit of stat. 1 Ed. 6. c. 12. s. 14. be immediately discharged without being burnt in the hand or imprisoned.
Ibid. and see title *Peeress.*

4. On an indictment for polygamy a a marriage in fact must be proved, as contrasted to representation arising from cohabitation only.
Morris and Miller, E. 7 Geo. 3. K. B. 1 Bl. Rep. 632. 4 Burr. Rep. 2057.

POST OFFICE.

1. A prisoner acquitted on a charge of felony committed as *a sorter and charger of letters* in the post office, not having been proved to be a person employed by the post office in any other business than that of *a sorter*, cannot be convicted on another count charging him generally as a person employed in the post office.
R. v. *Shaw*, Leach, 92.
2 Bl. Rep. 789. S. C.

2. If a letter carrier in the post office secrete on two different days two letters each containing half of the same bank note, it is a capital offence within 7 G. 3. c. 50. and he may be indicted that "he having *the said two letters* containing the said *bank note*, did secrete the said letters containing the said bank note," &c.
R. v. *Moore*, Leach, 655.

3. It appears doubtful whether an officer employed in the post office in stamping and facing the letters, who secretes a letter (containing a bank note), without opening it, (and not knowing there was such a note in the letter), but with intent to defraud the king of the postage thereof, is guilty of an offence under 5 G. 3. c. 25. s. 17. and 7 G. 3. c. 50.
R. v. *Sloper*, Leach, 94.
It does not appear what ultimately became of the prisoner.

4. If a servant of the post office secrete a letter containing *money*, he is not guilty of an offence within 5 G. 3. c. 25. or 7 G. 3. c. 50.
R. v. *Skutt*, Leach, 124.

5. But he may be indicted at common law for *stealing the money*, which was done in this case, and the prisoner was convicted thereof and transported. *Ibid.*

PRACTICE.

1. If the Ch. J. of K. B. commit one to the marshal by his warrant, he must not be brought to the bar by rule, but by *habeas corpus.*
Anon. 1 Salk. 349.

2. Sunday is not included in the four days to move in arrest of judgment, but the defendant must have four judicial days.
Sir C. Hales v. *Owen*, 2 Salk. 625.

3. Upon quashing an indictment for a misdemeanor the Court in their discretion will not discharge defendant without his entering into a recognizance to appear to a new indictment.
R. v. *Tray*, 3 Salk. 192.

4. An indictment may be removed from the sessions by writ of error, but the best way is to remove it by *certiorari* into the crown office and then bring a writ of error *coram nobis residen.* and upon that the course is to give a rule to assign error, and then to move for a peremptory rule, and in default thereof to have a *non pros*, and then an award of execution.
R. v. *Foxby*, 1 Salk. 266.

5. The Court will not upon motion increase a fine upon a defendant convicted of a riot after he has been convicted and been before the master and had costs taxed, without setting aside the costs taxed.
R. v. *Summers*, Ld. Raym. 855. Salk. 55. 3 Salk. 104.

6. After a defendant has forfeited his recognizance by not carrying the record of an indictment removed by *certiorari* down to trial at the assizes, the Court refused to hear a motion to quash the indictment.
Anon. 1 Salk. 380.

7. And they also refused to let him take any exceptions either to the *certiorari* or return.

8. If a person be indicted and tried in B. R. the indictment is entered on the plea roll, but if he be tried at the sessions of the O. B. the indictment when brought into K. B. is put into a bag and laid by.

R. v. *Walcot*, 1 Salk. 371.

9. Where a defendant is indicted he cannot send a plea into the office without finding security to try it at his own charge, but if he come into Court he may put in his plea and the Court is bound to receive it, but then he must be committed unless he give security to try it; and if he chooses to be committed then the trial must go on at the charge of the prosecutor, but if he give security the trial must be at his own charge.

R. v. *Tracy*, 3 Salk. 193.

10. If there be two indictments against a person for the same thing, as if one be found by a coroner's inquest and another by the grand jury, and the defendant is acquitted upon one yet he must still be tried on the other, to which he may plead the former acquittal; but now the usage is to try him on both at the same time.

R. v. *Culliford*, 1 Salk. 381. See also 3 Salk. 39.

11. The Court set aside the proceedings under a *scire facias* on recognizance, partly because it was taken out on the day on which the defendant made default, and because it was tested in term time, and he had to the last moment of it to appear in.

R. v. *White*, Stra. 1220.

12. Upon a defendant's submitting to a fine after confessing an indictment, affidavits may be read to prove that prosecutor made the assault, otherwise, after a conviction.

R. v. *Templeman*, Salk. 55.

13. A defendant being under recognizance to appear in Court on the first day of the term, and an information for a libel being preferred against him before the essoign day, he has all the next term to imparle, and so also if he comes in upon attachment. But upon a *capi* returned to a *capias* he shall plead *instanter*.

R. v. *Fitzgerald*, 1 Ld. Raym. 706.

14. Where a statute imposes a pecuniary penalty for an offence upon conviction by a justice of the peace, and directs that it shall be levied by the warrant of such justice, if the conviction is removed into B. R. and there confirmed, a *levari facias* may be sued out to levy the penalty.

R. v. *Ford & al.* 1 Ld. Raym. 768.

15. But if after the conviction is confirmed but before execution awarded the informer die, a *levari* cannot issue without a *sci. fa.* *Ibid.*

16. In this case his wife and administratrix suggested the informer's death on the roll, and that she was administratrix, and then sued out the *levari*, but the Court said that in no case where the parties to a judgment were changed ought execution to be sued by any other without a *sci. fa.* *Ibid.*

17. Informations were granted for perjury on the trial of an information for a conspiracy, and all the parties prosecuted agreeing, the Court on consent arrested the judgment on the conspiracy and quashed the two other informations.

R. v. *Green & Roper*, Stra. 1072.

18. It has not been usual so to do whereby such prosecutions are stifled, and the attorney-general never grants a *nolle prosequi* in such cases though by consent. *Ibid.*

19. A justice of the peace convicted of a misdemeanor upon an information is not entitled as of course to have his personal attendance dispensed with, and in this case the defendant appeared in person.

R. v. *Harwood*, Stra. 1088.

20. The defendant being a bricklayer was convicted for not building party walls according to the statute, and having brought a *certiorari*, died before the verdict, notwithstanding which the Court would go on and affirm the conviction.

R. v. *Roberts*, Stra. 937.

21. It is a good service on a defendant of a rule to shew cause why there should not be an information against

him, to serve it on his wife at his house if he be there; but in this case the wife making affidavit that the husband was gone beyond sea a week before the service of the rule, the Court held it not to be good.

R. v. *Badouin*, Stra. 1044.

22. If a sheriff return a jury to try an indictment on which he is prosecutor, the objection must be made on the trial by way of challenge to the jurors, and cannot after trial and conviction be moved in arrest of judgment when the prisoner is brought up to receive sentence.

R. v. *Sheppard*, Leach, 119.

23. An indictment being removed from the O. B. by *certiorari* into K. B. and the defendant pleading to the outlawry thereon that he was beyond the sea &c. if such plea be found for him the indictment cannot be sent back to be tried at the O. B.

R. v. *Johnson*, Stra. 825.

24. If a prosecutor removes an indictment from the sessions into B. R. the defendant cannot carry it down for trial at the assizes next after the removal.

R. v. *Banks, (Sir Jacob)* Ld. Raym. 1082. 2 Salk. 652.

25. Nor without leave of the Court on motion. *Ibid.*

26. Upon an indictment for forgery where judgment is prayed against the defendant under the stat. it is no objection in arrest of judgment that the *certiorari* and *venire* and *distringas* were as if it had been an indictment at common law; for a *certiorari* to remove all indictments will remove one for forgery under the statute, and the jury are summoned to try whether he is guilty of the offence whereof he is indicted, which is a sufficient warning to appear in the cause.

R. v. *Hayes*, Stra. 845.

27. A defendant convicted of a misdemeanor being in execution thereon, was by leave of the Court allowed to assign errors by attorney to save the charge of being brought up.

R. v. *Stapleton*, Stra. 443.

28. If upon a rule for a special jury (in a criminal case) to be struck by the master who was to chuse forty-eight out of the freeholders' book, out of which each side was to strike twelve, and the remaining twenty four were to be returned for the trial of the cause, and the defendant's agent in striking out his twelve expunges all the hundreders, the defendant at the trial cannot challenge the array for want of hundreders without being guilty of a contempt.

R. v. *Burridge*, Stra. 593. Ld. Raym. 1364.

29. But he might have had a challenge to the polls, because that would not hinder the cause from going on, for in that case there might have been a *tales*. *Ibid.*

30. A defendant having been bound over appeared in Court upon his recognizance, and there being a new warrant against him for treasonable practices committed since the previous term which could not be executed upon him, the Court allowed such warrant to be executed upon him in Court.

R. v. *Kelley*, Stra. 530.

31. Upon quashing an order of bastardy the defendant must appear in Court, because he must enter into a recognizance to abide the order of the sessions below.

R. v. *Gibson*, Bl. Rep. 198.

32. A *joint* information against five defendants cannot be granted on five separate rules for one or more informations against each individual, without any motion for a joint information.

R. v. *Heydon & al.* Burr. Rep. 1270.

33. The Court will not permit a defendant to a conviction removed into B. R. by *certiorari* to plead matters of right to do the act for which he was committed.

R. v. *Burnaby*, 3 Salk. 217. Ld. Raym. 900.

PRISON.

1. Newgate is as much the prison of the Court of King's Bench as the King's Bench Prison is; and *every*

prison in the kingdom is the prison of that Court.

Per Cur. in *R.* v. *Davis*, Burr. Rep. 642.

2. None can claim a prison as a franchise unless they have also a gaol delivery of felony.

R. v. *Tayler*, 1 Salk. 343.

3. And to a *habens* the return ought to be made with a claim of such franchise. *Ibid.*

PRISONER.

1. Although one in custody on a criminal matter cannot be charged at the suit of an individual in any action without leave of the Court, yet the crown can charge him without such leave.

Crackall v. *Thompson*, 1 Salk. 353.

2. A prisoner in custody in Newgate on an indictment for perjury found at the Old Bailey sessions, is not dischargeable on the indictment being removed by *certiorari* into the King's Bench on the ground that there was then no record before the Court; for when once a prisoner is in legal custody for an offence he must find sureties before he can be discharged; but if he had been on bail the removal of the indictment by *certiorari* would have discharged his recognizance.

R. v. *Richardson*, Leach, 637.

PRESENTMENT.

In a presentment in a court leet it is not necessary to shew *coment* or *quo jure* the court is held.

R. v. *Gilbert*, 1 Salk. 200.

PROHIBITION.

1. The Court granted a prohibition to the Spiritual Court to stay proceedings there on a libel against defendant for soliciting the chastity of a woman, defendant having been convicted upon an indictment for assaulting the woman with intent to ravish her.

Gallisand v. *Rigaud*, 2 Ld. Raym. 809. 2 Salk. 552. S. C.

2. The justices of Dorset having under the stat. 43 G. 3. c. 59. contracted for the building of a new bridge on a different scite in lieu of the old one which was ruinous, and having directed the old bridge to be taken down before the new one was passable, for the purpose of using the old materials in finishing the new bridge, the Court refused a writ of prohibition to restrain them from pulling down the old before the new bridge was passable.

R. v. *Justices of Dorset & al.* 15 E. R. 594.

RECEIVING STOLEN GOODS.

1. To receive guineas knowing them to have been stolen will not make a person an accessary after the fact under stat. 3 W & M. c. 9. s. 4. and 5 Ann. c. 31. s. 5. which name only *goods* and *chattels*, for *money* cannot be considered as coming within either definition.

R. v. *Guy*, Leach, 276. See Fost. 79.

2. So also to receive bank notes knowing them to have been stolen is not within these acts.

R. v. *Morris*, Leach, 525. See *Miller* v. *Rose*, 1 Burr. Rep. 457.

3. An indictment for a misdemeanor on stat. 22 G. 3. c. 58. for receiving stolen goods, need not negatively aver that the principal has not been convicted.

R. v. *Baxter*, Leach, 660.

4. And this opinion is warranted by the case of *R.* v. *Pollard*, 2 Ld. Raym. 1370. which was an indictment on 5 Ann. c. 31. s. 5. & 6. and the objection was that it was not averred in the indictment that the principal could not be taken, but the Judges held that such an averment was not necessary, and that though there had been several indictments for

such offences, none had had such averment. See No. 10.

5. For if there be any description in the negative, the affirmative of which would be an excuse for the defendant, the proof of it lies on him and it need not be stated in the indictment. *Ibid.*

6. Also that on that stat. 5 Ann. the prosecutor had his election to prosecute either for felony or misdemeanor. 2 Ld. Raym. 1370.

7. Persons receiving any part of the cargo belonging to a vessel in the river Thames knowing the same to be stolen are guilty of felony, for though the 12th section of 2 G. 3. c. 28. only directs that such offenders shall be transported according to the laws in force for the transportation of felons, yet by the 14th section, any persons stealing or unlawfully receiving stolen goods knowing the same to be stolen, shall on discovering two other offenders be entitled to a pardon *for all such felonies.*

R. v. *Wyer*, 2 T. R. 77.

8. Where it appeared that the prosecutor was in company for two days successively with a person who confessed himself to be the principal felon but who was not apprehended by the prosecutor nor even taken for the principal felony, yet the receiver of goods stolen by such principal felon may be prosecuted for a misdemeanor under the above statutes.

R. v. *Wilkes*, Leach, 121.

N. B. Upon the above case being referred the Judges were divided; some of them thinking that as the principal felon was known and might have been taken the conviction was improper, because the statute allows an indictment for a misdemeanor only "if the principal felon cannot be taken," but seven of the Judges were of opinion that as it did not appear from the finding of the jury that the principal felon could have been taken *so as to be prosecuted and convicted* the verdict was right.

9. An accessary indicted after the conviction of the principal for the felony of receiving stolen goods may controvert the guilt of the principal notwithstanding the record of his conviction, and if it appear that the goods were taken by the principal under circumstances which did not amount to larceny, the accessary shall be acquitted.

R. v. *Smith*, Leach, 323.

In this case upon the trial of the accessary it appeared that the prosecutor had entrusted the principal with the goods in such a way as to make the *conversion* of them a breach of trust only, and not a felony.

10. If a statute makes the receiver of stolen goods an accessary to the felony, but provides if the principal cannot be taken so as to be prosecuted and convicted, the receiver may be prosecuted as for a misdemeanor; an indictment against him as for a misdemeanor cannot be excepted to after verdict, because it does not shew that the principal could not be taken so as to be prosecuted and convicted.

R. v. *Pollard*, 2 Ld. Raym. 1370.

RECOGNIZANCE.

1. If a statute directs that on the allowance of a *certiorari*, bail to a certain amount shall be given, and higher bail is taken, the recognizance will still be good as at common law, but in such case the recognizance not being according to the statute, the *certiorari* will not act as a *supersedeas.*

R. v. *Ewer*, 2 Salk. 563.

2. If a mistrial be purposely had by a defendant his recognizance is forfeited, for he is to try with *effect.*

R. v. *Tracy*, 3 Salk. 192.

3. And the Court said if defendants will so act their recognizances shall be estreated, or a *sci. fa.* be brought thereon, for B. R. may take either course unless a defendant will enter into recognizance to try *de novo*, which was done in this case.

Ibid.

RECORD.

1. A presentment of an highway being out of repair having been traversed and issue joined thereon, a *venire* was awarded for twelve jurors to find the issue, and afterwards the record stated "that the jurors by the sheriff aforesaid being called and empannelled for this purpose came" and find a verdict for the crown, held bad, there being no *jurors named* in the record, nor was it so much as stated that they were twelve in number, which is absolutely necessary to appear on the record.
   R. v. *Southampton, (Inhabs. St. Michael,)* Bl. Rep. 718.
2. In cases of felony it is not necessary that the joinder of the issue should appear upon the record.
   R. v. *Royce,* Burr. Rep. 2084, and *Purchase's case,* 8 St. Trial, 286. there cited. *R.* v. *Oneby,* S. P. Stra. 765.

RESCUE.

1. The return of a rescue was quashed because it was *recussit* instead of *rescussit.*
   R. v. *Ely,* 1 Ld. Raym. 95.
2. A return to a rescue that the bailiffs had him in the *custody of the sheriff,* and that A. rescued him out of the custody of the *bailiffs* is repugnant, and therefore bad.
   Anon. 1 Salk. 586.
   1 Ld. Raym. 589.
3. A return of rescue must be taken to be true, but the Court will permit the defendants in mitigation to shew that there was in fact no *actual* arrest.
   R. v. *Minify & al.* Stra. 642.
4. Anciently there was a settled fine for rescues, but of late the Courts have fined according to their discretion upon considering the circumstances of the case. *Ibid.*
5. A defendant against whom an attachment had issued having been returned by the sheriff "guilty of a rescue," (upon an arrest on *mesne process,*) qu. whether the Court is precluded from imposing any other fine than four nobles on the defendant. In this case he was fined five pounds.
   R. v. *Elkins,* Burr. Rep. 2129. See No. 8.
6. The Court refused to grant an attachment against a person for a voluntary escape of one in execution for obstructing an excise officer in the execution of his office, but ordered him to shew cause why there should not be an information.
   Gaoler of Shrewsbury's case, 1 Stra. 532.
7. Attachment for a rescue upon *mesne process* refused upon affidavit of the fact, for the rescue must be returned upon the writ, and the motion and attachment be founded upon that.
   Anon. 2 Salk. 586.
8. It was said in the above case by Sir S. Astry to be the constant practice upon the return of a rescue to set four nobles fine upon each offender.
   Ibid. but see 4 Burr. Rep. 2189 *contra.*
9. In the case of a rescue there are two ways of proceeding: if the rescue is returned to the philazer and process of outlawry issues and the rescuer is brought into Court, he shall not be discharged upon affidavits, but where upon the return of a rescue an attachment is granted and the party examined upon interrogatories, upon answering them he shall be discharged.
   R. v. *Belt,* 2 Salk. 586.

RESTITUTION OF STOLEN GOODS.

1. At common law where goods were feloniously taken away the owner had no remedy to recover them but by *appeal,* and therefore if the party were indicted before the appeal brought, and either convicted or acquitted, the appeal was barred, and consequently the owner lost his goods for ever, for if convicted they were forfeited to the king, and if acquitted that was a good bar to the

appeal; therefore in favour to the owner and to give him a reasonable time to bring his appeal, the king seldom proceeded by way of indictment till a full year after the offence done: But then there was this inconvenience, that the king's evidence was either kept secret or died and the party would bring an appeal. Therefore by the stat. 21 H. 8. c. 11. the owner had the same advantage upon a conviction as he had upon the appeal, viz. that a writ of restitution should be awarded as well upon a conviction upon an indictment as on an appeal.

3 Salk. 313.

2. The owner of goods stolen prosecuting the felon to conviction cannot recover the value of them in trover from the person who purchased them in market overt and sold them again before conviction, notwithstanding the owner gave him notice of the robbery while they were in his possession.

Horwood v. *Smith*, 2 T. R. 750. See No. 7.

3. For, in order to maintain trover, the plaintiff must prove that the goods were his property, and that *while they were so* they came to the defendant's possession, who converted them to his use.

2 T. R. 756.

4. But he has a right to restitution of the goods in specie. 2 T. R. 755.

5. And perhaps would be entitled to recover damages in trover against any person who is fixed with the goods after conviction, and refuses to deliver them. 2 T. R. 755.

6. The statute 21 H. 8. c. 11. which restores goods to a prosecutor on conviction of the offender, extends only to a *felonious* and not a fraudulent taking, and therefore the Court has no power to award restitution of goods obtained by false pretences.

R. v. *De Veaux & al.* Leach, 665.

7. If goods be obtained from A. by fraud, and pawned to B. without notice, and A. prosecute the offender to conviction and get possession of his goods, B. may maintain trover for them; for this is distinguishable from the case of felony, where the owner's right of restitution is given by positive statute. (21 H. 8. c. 11.)

Parker v. *Patrick*, 5 T. R. 175.

RESTITUTION, WRIT OF.

Where a defendant had been convicted upon an indictment for barretry and fined £100. which was levied by the sheriff and paid into the hands of the collectors, and afterwards the judgment was reversed, the Court refused upon motion to grant a writ of restitution to the collectors, because they were not party to any record in B. R. and the defendant ought to sue out a special *sci. fa.* and make them parties.

R. v. *Leaver*, 2 Salk. 587.

RIOT.

1. Where six were indicted for a riot the jury found *two guilty* of a riot, two were acquitted, and two died untried, the Court refused to arrest the judgment, for they said that as two had been found guilty, it must have been with those two who had never been tried.

R. v. *Scott & al.* Burr. Rep. 1263.

2. Where several are indicted for a riot and a battery on M. R. and all are acquitted but *two*, no judgment can be given against them, for two cannot be guilty of a riot.

R. v. *Sadbury, Heapes & al.* 1 Ld. Raym. 484.

3. And they cannot upon an indictment so framed be found guilty of the battery, though it was said that the *riotously* &c. was only to express the manner of the assault and a kind of aggravation of the offence; for it is a special offence and is laid as a riot, for the riotously extends to all the facts and the battery is but part of the riot, and the defendants being acquitted of the riot are acquitted of the whole of which they are indicted. *Ibid.*

4. But if the indictment had been that the defendants with *divers other*

disturbers &c. had committed this riot and battery, and the verdict had been as in this case, the king might have had judgment. *Ibid.*

5. If a riot be suppressed by justices of the peace together with the sheriff, having the *posse comitatus* with them for that purpose and the rioters be convicted on view by an inquisition taken by virtue of stat. 13 H. 4. c. 7. s. 1. the sheriff ought to be a party to such inquisition, and so he ought by 19 H. 7. c. 13.
R. v. *Ingram & al.* 1 Ld. Raym. 215. 3 Salk. 317. 2 Salk. 593.

6. But if the rioters disperse of themselves, and after they are parted an inquisition is made of it, the sheriff need not be party, for the justices may make the inquisition without him. *Ibid.*

7. Such an inquisition need not be as taken *pro domino regi et corpore comitatus*, but *pro domino rege* is sufficient or rather better, for the inquiry is not for the county but for the king. *Ibid.*

8. Though the words of the statute are that the justices &c. shall make inquiry within one month after the riot, yet an inquiry by them after the month is good, for the lapse of a month does not determine their authority but only subjects them to a penalty, the statute being only intended to hasten their proceedings. *Ibid.*

9. Upon an indictment for a riot and riotously taking away two water engines, it was moved in arrest of judgment after verdict, that there was no *vi et armis*, but held that the *riotose ceperunt fregerunt et prostraverunt, implies a force*, and the indictment is good enough.
R. v. *Wynd*, Stra. 833.

10. An indictment for a riot must shew for what act the rioters assembled, that the Court may judge whether it was lawful or not.
R. v. *Gulston & al.* Ld. Raym. 1210.

11. An indictment for a riot must state that the defendants unlawfully assembled, for a riot is a compound offence; there must not only be an unlawful act, but an unlawful assembly of more than two persons.
R. v. *Soley & al.* 2 Salk. 593.

12. Information for a riot concluding against the stat. 13 H. 4. held ill. 3 Salk. 329.

13. An indictment against W. R. for that he *cum multis aliis* at H. &c. did commit a riot, held good.
Anon. 3 Salk. 307.

14. Defendants being convicted upon an indictment for riotously assembling to disturb the peace &c. and *vi et armis ostium cujusdam domus vocat* the Guildhall. *Burgi de Bewdly clausum existen. de cardinibus riotose et routose clevaverunt;* upon motion in arrest of judgment the indictment was held bad, for it did not appear whose house it was, if it was the defendant's it was not an unlawful act, and saying, called the Guildhall &c. does not make it so, for a guildhall may belong to private persons as well as to a borough, and there must be some unlawful act.
R. v. *Soley et al.* 2 Salk. 594.

15. On information for a riot, an infant defendant may appear by attorney.
Q. v. *Tanner*, 2 Ld. Raym. 1284.

16. Several being indicted for a riot, it was moved that the prosecutor might name two or three and try it against them, and that the rest might enter into a rule to plead not guilty [*guilty if the others were found guilty,*] and a rule was made accordingly; this being to prevent the charges in putting them all to plead.
Anon. 3 Salk. 317.

ROBBERY.

1. If a robber take a purse containing money from a person, and restore it to him immediately, saying, "if you value your purse you will please to take it back, and give me the contents of it;" but he is apprehended before the money is redelivered to him, yet it is a sufficient *taking* to complete the offence, al-

though the prisoner's possession continued for an instant only.

R. v. *Peat*, Leach, 266.

2. To obtain from a person his note of hand by threats and violence, is not an offence within 2 G. 2. c. 25. for it never having been of any value to nor in the *possession* of the prosecutor.

R. v. *Phipoe*, Leach, 774.

3. In the above case the paper on which, and the ink wherewith, the note was written were the property of the prisoner, and the delivery of the note by her to the prosecutor merely for the purpose of his placing his signature to it, could not be considered as vesting it in him.

Ibid.

4. To snatch property from the hands of the prosecutor as he was passing with it on his head, but without speaking to or stopping him, or in any way touching his person, is not an highway robbery; for to constitute that offence there must be some struggle to keep the property, and it must be forced from the owner.

R. v. *Baker*, Leach, 324.

5. And so where an umbrella was suddenly snatched out of the prosecutrix's hand as she was walking the street.

R. v. *Horner*, Leach, 325. *n.* And see *R.* v. *Macauley*, Leach, 324. and *Chick's case*, O. B. Dec. Sessions. 1781, where the same distinction was adopted, Leach, 525. *n.*

6. But where a heavy diamond pin, with a corkscrew stalk, twisted very much in a lady's hair, which was closed, frizzed and strongly craped, was snatched out, and part of the hair torn away with it, this was held a sufficient degree of violence to constitute robbery.

R. v. *Moore*, O. B. Sessions, 1784, Leach, 325. *n.* And see *Lapier's case* under this title.

The prisoner, a police officer at Shadwell office, having the prosecutrix in custody for an assault, under pretence of better securing her on the way to the prison, handcuffed her to another person, locked her up and used other severities, and threatened to carry her to gaol, to prevent which she offered him a shilling; the prisoner however placed her in a coach, handcuffed to the other person, and whilst there put a handkerchief to her mouth and forcibly took from her the shilling she had offered him, and which she still held in her hand, and afterwards put his hand into her pocket and took thereout three shillings: The jury found specially that the prisoner at the time he forced the prosecutrix into the coach had a felonious intent of getting whatever money she might chance to have about her; that he had made use of the violence with the handkerchief as a means of preventing her resistance, and that handcuffing her to another under pretence of more safely conveying them to prison was only a colourable pretence of putting his felonious intent into execution by rendering the prosecutrix incapable of defending herself: upon reference to the Judges, they were unanimously of opinion that upon this finding of the jury the offence the prisoner had committed was clearly a robbery.

R. v. *Samuel Gascoine*, Leach, 313.

8. But to obtain money merely by a threat to send for a constable and take the party before a magistrate and from thence to prison is not robbery: for the threat of legal imprisonment ought not so to alarm any mind as to induce the person to whom it is made to part with his property.

R. v. *Knewland & Wood*, Leach, 833.

9. The prisoner having accidentally met with the prosecutor at the play, entered into conversation, and at the conclusion of the entertainment they drank together, and the prisoner having finished drinking turned to the prosecutor and asked him what he meant by the liberties he had taken with his person in the playhouse: the prosecutor replied, he knew of no liberties being taken; upon which the prisoner said, "damn

you sir but you did." The prosecutor being greatly alarmed at this accusation paid for the beer and left the house where they had been drinking, and the prisoner followed him out and hollowed out, "damn you sir stop, for if you offer to run, I will raise a mob after you," and *seizing him violently by the arm* exclaimed "damn you sir this is not to be borne, you have offered an indignity to me and nothing can satisfy it." The prosecutor terrified by these expressions replied, "for "God's sake what do you want, what would you have me do?"— "*A present, a present; you must make me a present,*" replied the prisoner. "A present of what?" said the prosecutor. "Come, come," replied the prisoner, "what money have you, how much can you give me now?" The prosecutor said, "I have but a little, but what I have got you shall have," *and he accordingly gave him three guineas and twelve shillings.* The prisoner as he took it asked him if it was all he had, and on replying in the affirmative, said "damn you sir, this is not enough, I must have a further sum." *The prisoner, during the whole of this conversation, held the prosecutor fast by the arm, and thereby defeated the several efforts he made to get away;* but at length the prisoner suffered him to walk on, he still accompanying him, *and keeping tight hold of his arm*, which the prosecutor swore put him in great fear *for the safety of his person:* The prisoner afterwards followed the prosecutor to the door of his lodgings, where he called the next morning and procured 40*l.* more; the prisoner was upon these facts indicted for a highway robbery, and upon a case reserved, the Judges were of opinion that a sufficient degree of force had been made use of to constitute the offence of robbery.

R. v. *Jones*, Leach, 164.

10. In a subsequent similar case the circumstances were as follow: The prosecutor (a school boy,) had dined at a friend's, and on the 18th of January returning through Soho Square between six and seven in the evening, he met the prisoner, whom he had never seen before; the prisoner desired the prosecutor to give him a present; the prosecutor asked for what: The prisoner answered, "you had better comply, or I will take you before a magistrate and accuse you of an attempt to commit an unnatural crime." The prosecutor gave him half a guinea, which the prisoner said was not sufficient. On the 20th January, about four in the evening, the prosecutor met the prisoner in Oxford Street, who made use of the same threats as before; said the prosecutor knew what passed in Soho Square, and unless he would give him more money he would take him before a magistrate and accuse him of the same attempt, and it would go hard against him unless he could prove an *alibi*. The prosecutor then went into a shop, the prisoner followed him, and staid outside the door: the prosecutor took a guinea out of his pocket, gave it to the master of the shop and desired him to give it to the man at the door, which the prosecutor saw him do, and then the prisoner went away. The prosecutor said he was exceedingly alarmed at both the times, and under that alarm gave the money. He was not aware what were the consequences of such a charge, and he apprehended it might cost him his life. The prisoner was tried on the two cases for highway robbery, and found guilty on both; and the jury said they were satisfied the prosecutor delivered his money through fear and under an apprehension that his life was in danger. And upon reference to the Judges whether the above facts amounted in law to robbery, they were unanimously of opinion that the prisoner was guilty of the crime of which he had been convicted.

R. v. *Donally*, Leach, 229.

11. The prosecutor was servant to a gentleman, and had an apartment (in which he always slept,) in St.

James's Palace; the prisoner was a centinel on guard at the palace, and had been one night treated by the prosecutor with some refreshment in his room; about a fortnight afterwards, very late in the evening, the prosecutor on going up stairs heard somebody stepping very closely behind him; on turning round he saw the prisoner, who said "it is me." The prosecutor replied, "what brought you here at this time of the night?" The prisoner answered, "I am come for satisfaction: you know what passed the other night, you are a sodomite, and if you do not give me satisfaction I will go and fetch a serjeant and a file of men, and take you before a justice, for I have been in the black-hole ever since I was here last, and I do not value my life." The prosecutor asked him what money he must have; the prisoner said, "I must have three or four guineas." The prosecutor accordingly gave him two guineas, which was all he had, and promised to give him another guinea the next morning. The prisoner took the two guineas, saying, "mind I don't *demand* any thing of you." The next morning he came again and received the other guinea. The prosecutor swore that he was very much alarmed when he gave him the two guineas, and did not very well know what he did, but that he parted with his money under the idea of preserving his character from reproach, and not from the fear of personal violence. The prisoner was convicted of the robbery; but this case appearing to differ from Donally's in the circumstance of the prosecutor's parting with his money for the sake of his character only, and not from any fear of danger to his person; and Donally not having been executed, the judgment was respited, and the case submitted to the consideration of the Judges upon the above mentioned difference: and they were of opinion that this case did not materially differ from Donally's, for that the true definition of robbery is the stealing or taking from the person or in the presence of another, property of any amount, with such a degree of *force* or *terror* as to induce the party *unwillingly* to part with his property; and whether the terror arises from real or expected violence to the person, or from a sense of injury to the character, the law makes no difference.

R. v. *Hickman, Leach*, 313.

12. An indictment for a highway robbery must lay the *assault* to have been *feloniously* made.

R. v. *Pelfryman and Randal*, Leach, 641.

13. An indictment for a highway robbery on a woman in her *maiden name* is good, if she marry after the robbery and before the indictment is preferred.

R. v. *Turner*, Leach, 606.

SESSIONS.

1. The sessions have no original jurisdiction to make an order for the relief of a pauper.

R. v. *Winship & Grunwell*, Burr. Rep. 2677.

2. The sessions have jurisdiction over cheats in general, and in *R.* v. *Brayne, Mich.* 12 G. 1. and *R.* v. *Reale*, East, 38 G. 3. the Court of B. R. gave judgment as for a cheat, on indictments respectively removed from the sessions by *certiorari*.

1 E. R. 183.

3. The sessions have cognizance of all trespasses and other offences which tend either directly or consequentially to a breach of the peace; except forgery and perjury.

Per Lord Kenyon. 2 E. R. 18. 3 Burr. Rep. 1320. 1 Bl. Rep. 368.

4. The sessions have no jurisdiction over a newly created offence, unless it is given them by the statute.

R. v. *Douse*, 1 Ld. Raym. 672.

5. An indictment at the sessions for fastening nets across a river, contrary to 2 H. 6. c. 15. was quashed, on the ground that the stat. gives a penalty of 100*s*. but gives no jurisdiction to the sessions, and they can-

not have it without express words in the case of a new created offence.

R. v. *James et al.* Stra. 1255.

6. The sessions have jurisdiction to examine the accounts of the expenses of constables, incurred in conveying and maintaining vagrants.

R. v. *Erle*, Burr. Rep. 1197.

7. The sessions have no jurisdiction of usury.

R. v. *Smith*, Ld. Raym. 1144. 2 Salk. 680. *R.* v. *Bakestraw*, 3 Salk. 188. S. P.

8. Nor for shooting with a hand gun and hail shot. *Ibid.*

9. An indictment for forgery does not lie before justices of the peace at the sessions.

R. v. *Yarrington*, 1 Salk. 406.

10. The sessions have no power to make an order for prosecuting a person as a barretor, at the charge of the county.

R. v. *Savill* or *Savin*. Ld. Raym. 871. Salk. 605.

11. And the stat. 43 Eliz. c. 2. has no bearing on this question, and a gift of lands to raise money to prosecute offenders, would not be good as a charitable use.

Salk. 605.

12. Where by statute a special authority is delegated to the sessions affecting the property of individuals, it must be strictly pursued and appear to be so upon the *face* of the proceedings.

R. v. *Croke*, Cowp. 26.

13. The sessions are merely ministerial as to registering meeting houses recording the certificate under the act of toleration,

R. v. *Derbyshire (Justices,)* Bl. Rep. 606.

14. If the sessions adjourn their proceedings to a day subsequent to the expiration of an act of parliament, they lose their jurisdiction, and cannot afterwards be compelled to go on with the proceedings.

R. v. *Justices of London*, Burr. Rep. 1456.

15. Upon an appeal to the sessions against a scavenger's rate, the sessions may quash it, but have no original jurisdiction to make a new rate.

R. v. *Inhabs. of St. Andrew's, Holborn, and St. George the Martyr*, Burr. Rep. 1458.

16. The sessions are not obliged to give any *reason* why they quashed an order.

R. v. *Cornwall (Justices,)* Burr. Rep. 2102.

17. The sessions quashed a poor's rate because the stock in trade of some manufacturers in the parish was not rated, and stated that by the usage of the parish all such manufacturers had been constantly assessed to the land tax, but never to the poor's rate for their stock in trade; and the Court of K. B. quashed the order of sessions because it was not proved that there were any manufacturers in the parish which had stock in trade, and said that had it been so found the justices should not have quashed the whole rate, but amended it by inserting therein the particular persons whom they thought rateable: For the Court would not thus be induced to give an opinion whether stock in trade was liable to the poor's rate, but only determine the particular case before them.

R. v. *Witney Inhabs.* Bl. Rep. 709.

18. It is a great irregularity to reserve a case for the opinion of the Court of K. B. upon the trial of an indictment at the quarter sessions, and the court of quarter sessions have no power so to do.

R. v. *Salop Inhabs.* 13 E. R. 95.

SEWERS.

Some orders of sewers having been made upon the defendant he removed them by *certiorari*, and upon the motion to file, the commissioners offered to try any issue the defendant could take upon them: he refused to come into any issue and the Court inclined to grant a *procedendo* for that reason, but upon fur-

ther consideration they thought they could not refuse to hear the objections; but then they would not file the orders first but debate the objections upon the motion to file, so as to have it in their power to send them back again.

R. v. *Cann, (Sir Rob.)* Stra. 1263.

SHERIFF.

Where two persons are sheriffs and a suggestion is entered on the roll that one of them was defendant, the *venire* shall be directed to the other.

R. v. *Warrington & al.* 1 Salk. 152.

SMUGGLING.

1. Q. whether in an indictment on 1 Ed. 6. c. 12. s. 10. for breaking and entering a dwelling house in the day time, evidence of breaking a door open and the lock of a cupboard after having by fraud obtained admission into the house is sufficient to support the indictment.

R. v. *Hamilton & Chesser*, Leach, 386.

2. Where it is found by a special verdict upon an indictment against several prisoners under 9 G. 1. c. 35. for being armed and assisting in running uncustomed goods, that there were above three in company, and all the others had fire arms, but that the defendant had only a common horsewhip, the Court strongly inclined that he was not guilty; for the act makes it a material circumstance in each man's case, and these acts are to be taken strictly: this point was not determined upon the first argument, but the Court gave Mr. Attorney-General time to consider of it, who afterwards declined to argue it, and the prisoner was discharged.

R. v. *Fletcher*, Stra. 1166. Leach, 27.

STATUTES.

1. The 33 Ed. 1. st. 6. is a Statute and not an Ordinance.

R. v. *Everard*, 1 Ld. Raym. 638. 1 Salk. 195.

2. Where the words of a statute are doubtful, general usage may be called in to explain them; but where they are clear, the usage of a particular place cannot control them.

R. v. *Hogg*, 1 T. R. 728.

3. Though the preamble of an act cannot control the clear and positive words of the enacting part, it may explain them if ambiguous.

Crespigny v. *Wittenoom*, 4 T. R. 793.

4. Acts of parliament relating to trade in general are public acts, but an act which relates to a certain trade only is a private one.

Kirk v. *Nowell*, 1 T. R. 125.

5. Where an exception is *in the enacting clause* of a statute giving a right or a forfeiture, the party suing for the right or forfeiture must negative the exception in his declaration.

Gill v. *Scrivens*, 7 T. R. 27.

6. The bare recital in a subsequent statute is not sufficient to repeal the positive provisions of a former one.

Dore v. *Gray*, 2 T. R. 365.

7. Where a statute professes to repeal absolutely a prior law, and substitutes other provisions on the same subject, which are limited to continue only till a certain time, the prior law does not revive after the repealing statute is spent, unless the intention of the legislature to that effect be expressed.

Warren q. t. v. *Windle*, 3 E. R. 205.

8. If a statute expire, and afterwards be revived again by another statute, the law derives its force from the first.

Shipman q. t. v. *Henbest*, 4 T. R. 109.

9. And therefore stat. 21 Jac. 1. c. 4. extends to statutes made since, which revive statutes made before.

4 T. R. 109.

10. A contract declared by statute to be illegal, is not made good by a subsequent repeal of the statute.

Jaques v. *Withy*, 1 H. B. 65.

11. An act of parliament which is to take effect "from and after the passing of the act," operates by legal relation from the first day of the session.

Latless v. *Holmes*, 4 T. R. 660.

12. The exceptions of a statute shall relate to the day on which it appears by the purview of the act it is intended they shall relate; for though a statute shall generally be construed to relate to the first day of the session, yet that shall not hold where there is a particular day mentioned, in which case the relation of the act is confined to such a day.

R. v. *Gall*, 1 Ld. Raym. 370.
1 Salk. 372.

13. But see stat. 33 G. 3. c. 13. by which the operation of every statute is to commence from the time of receiving the royal assent, unless any other period is appointed in the act.

14. The construction of statutes, though relating to matters of an ecclesiastical nature, belongs to the superior courts of common law.

Gould v. *Gapper*, 5 E. P. 345.

15. A statute simply giving remedy at common law for a thing before recoverable in the Spiritual Court does not take away the jurisdiction of that Court.

R. v. *Sarchee*, 1 Ld. Raym. 323.

16. But where a statute alters the nature of the offence and inflicts a new penalty, the Ecclesiastical Court shall not proceed against an offender.

Ibid.

17. The Court in giving judgment upon the act 6 G. 1. c. 18. s. 18, 19. against a defendant for being the projector of an unlawful undertaking, have a discretionary power to inflict *all* or only *some* of the penalties of a *præmunire*.

R. v. *Caywood*, Stra. 471.
Ld. Raym. 1361.

18. A person cannot be *fined* upon an inquisition before justices of the peace for killing rabbits in a *private warren*; for the stat. 22 & 23 Car. 2. c. 25. s. 4. gives *treble costs and damages* but no fine; and the stat. 4 & 5 W. & M. c. 23. extends only to *game* and so cannot relate to *rabbits*.

R. v. *Yates*, 1 Ld. Raym. 151.

19. The stat. 24 G. 3. c. 47. s. 15. extends to the protection of *excise* officers, as well as to custom-house officers and officers of the navy.

R. v. *Brady*, Leach, 949.

20. A statute entitled "An Act to indemnify certain Persons upon the terms *in this Act* mentioned, and *for relief* of Officers," &c. is continued by a subsequent statute made for that purpose, although in reciting the title of the former act it is said, "upon the terms *therein* mentioned and for *the* relief of officers," &c. for the intention of the legislature must be looked to, and if the first mentioned statute was not intended to be continued none was.

R. v. *Longmead*, Leach, 800.

21. Butter exported from Ireland to Lisbon and from Lisbon into England, is not to be considered as included in the statutes prohibiting the importation of it from Ireland into England.

R. v. *Bell*, Burr. Rep. 1173.

22. The stat. 28 Ed. 1. c. 20. which prohibits the making silver plate under the standard alloy, is not repealed by any of the subsequent statutes against the same offence, for they only add accumulative penalties.

R. v. *Jackson*, Cowp. 297.

23. Upon an information against a defendant for having made wooden buttons contrary to 10 W. 3. c. 2. the Court held that all the *button* being of wood, there being a *shank* of wire inserted into it, made no difference, for that it might still be called a button of wood, for the shank made no essential difference in it, for buttons of silk and hair have no shank.

R. v. *Roberts*, 1 Ld. Raym. 712.

24. Upon an information and verdict against *several* persons for obstructing a custom-house officer, contrary

to 8 G. 1. c. 18. s. 25. each defendant is *separately* liable to the penalty imposed by the act.

R. v. *Clark & al.* Cowp. 610.

25. The stat. 6 G. 3. c. 36. against destroying in the *night* time shrubs of the value of five shillings growing in an enclosed ground, is not repealed by stat. 6 G. 3. c. 48.

R. v. *Howe*, Leach, 541.

26. It is an offence within the statute 28 G. 3. c. 38. s. 31. to press together *yarn* made of wool; and a declaration or information on this act need not aver that *it was in such a state as might be reduced to and used as wool again.*

Dyer v. *Hainsworth*, 3 T. R. 611.

27. *Semble* such averment is only necessary in the case of a prosecution for "*pretended manufactures.*"

3 T. R. 611.

28. Justices of the peace may order the payment of wages for work and labour in husbandry generally, and unless the contrary appears on the face of the order, the Court will intend that it was such wages as were within the statute.

R. v. *Gouche*, Ld. Raym. 820. Salk. 441. S. C.

29. A person present *encouraging and abetting* others unknown in beginning to demolish a dwelling-house, is ousted of clergy.

R. v. *Royce*, Burr. Rep. 2073.

30. In the above case it was found by a special verdict that the prisoner with others to the number of 100 and more, did assemble together, and being so assembled, divers of the unknown persons did begin to demolish and pull down the dwelling house mentioned in the indictment; and that at the time when the unknown persons so began to demolish the dwelling house, the prisoner was then and there present and did encourage and abet the persons unknown in beginning to demolish &c. by shouting and using expressions to incite the persons unknown so to do, but that the prisoner did not begin to demolish or pull down *or do any act with his own hands or person for that purpose*, otherwise than as aforesaid, and this special finding was holden sufficient to warrant the judgment. *Ibid.*

N. B. The word *aiding* was originally inserted in the special verdict, but struck out by the Judge who tried the case. *Ibid.*

31. Where a stat. gives a penalty to be recovered before justices of peace and prescribes no method, it ought to be by bill.

Anon. 2 Salk. 606.

32. All papers destined and prepared for the uses mentioned in stat. 23 G. 3. c. 49. s. 20. (imposing a stamp duty on receipts) and upon the face of which there is a mark resembling the stamp required by that act, shall be considered as "*paper liable to the duties.*"

R. v. *Palmer*, Leach, 391.

33. Where a statute directs the doing of a thing for the sake of justice or the public good, the word *may* is the same as the word *shall.*

R. v. *Barlow*, 2 Salk. 609.

34. Thus 23 H. 6. says, the sheriff *may* take bail; this is construed he *shall*, for he is compellable so to do. *Ibid.*

35. Upon indictments upon stat. 5 Eliz. the Court allows following the trade for seven years to be sufficient without any binding, it being a hard law.

R. v. *Maddox*, 2 Salk. 613.

36. Exercising the trade by others is within the stat.

Hobbs q. t. v. *Young*, 2 Salk. 610.

37. Though such persons employed had served apprenticeships. *Ibid.*

38. Where a statute made to prevent smuggling directs that all orders in council shall be affixed and proclaimed in two market towns *near* the place where the fact was committed, and it was done in one town within six miles, in another within 33 miles, and in a third within 42 miles, but that there were four or five market towns within eight or nine miles of it. The Court held, that the directions of the act had not been strictly pursued, not that by *near* must be understood *next*, but that there must be a reasonable

vicinity of which the Court would judge.

R. v. *Hervey*, Bl. Rep. 20.

89. A whip (of a common size) is not an offensive weapon within the meaning of the stat. 9 G. 1. c. 35.

R. v. *Fletcher*, Leach, 27.

See *R.* v. *Fletcher*, 2 Stra. 1166.

40. Q. Whether a person who takes some of the stamps from a writ and fixes them to another writ of the same kind and then sells it for the purpose of its being used *by such persons as might buy it from his vendor* is within the stat. 12 G. 3. c. 48.

R. v. *Tho. Field*, Leach, 426.

41. A justice before whom a deserter is brought and committed to the county gaol, may if the deserter is unable to defray the charges, direct the expenses of conveying him thither to be paid by the treasurer of the county to the constable of the parish where the deserter was found and apprehended, and this by virtue of the stat. 3 Jac. 1. c. 10.

R. v. *Peirce*, 3 Man. & Sel. Rep. 62.

42. The stat. 13 Car. 2, st. 1. c. 5. is not repealed by the bill of rights 1 W. & M. s. 2. c. 2. or any other statute, and the Court held that the latter statute did not mean at all to meddle with the former one.

R. v. *Gordon (Ld.)* Dougl. 590.

43. The exchanging guineas *for bank notes* taking the guineas in such exchange at a higher value than they were current for by the king's proclamation is not an offence within the stat. 5 & 6 Ed. 6. c. 19.

R. v. *De Yonge*, 14 E. R. 402.

S. P. *R.* v. *Wright*, (cited) 14 E. R. 402.

44. Upon an information founded on stat. 1 G. 1. c. 47. filed against a defendant for persuading soldiers to desert, and tried at the assizes, this Court is the proper Court to award punishment, and if they award imprisonment besides the penalty of 40*l.* they are bound also to adjudge to the pillory.

R. v. *Read*, 16 E. R. 404.

45. Under the stat. 20 G. 2. c. 19. s. 2. for regulating servants in husbandry, artificers and other labourers there mentioned, if a justice of peace upon a complaint made to him of the misconduct of such persons in their employment, sentence the offender to be committed to the house of correction for a time not exceeding one calendar month, he must if he intend to proceed upon that statute, also sentence him to be *there corrected and held to hard labour*; but the stat gives the justice an option to punish the offender in that manner *or otherwise*, by abating part of his wages or by discharging him from his employment. And the meaning of the terms "there to be corrected" is to be understood of a correction by *whipping*. But this latter punishment cannot be inflicted upon the like offenders under the stat. 6 G. 3. c. 25. which enables the justices to *commit the offender to the house of correction for any time not exceeding three months nor less than one month;* nor can the punishments inflicted by the two acts be blended.

R. v. *Hoseason*, 14 E. R. 605.

The *employer*, of the servant is the master for whose service he is retained, and not the bailiff of the farmer who in fact hires the servant.

Ibid.

STOLEN GOODS (HELPING TO.)

1. Q. whether a person who receives money as a reward for helping another to stolen goods can be prosecuted before the principal felon is convicted.

R. v. *Drinkwater*, Leach, 18.

2. In the above case the principal felon was dead, and had never been convicted: after arguments by counsel on both sides the case was reserved for the opinion of the Judges, and the prisoner was ultimately discharged, but the opinion of the Judges was never publicly communicated. *Ibid.*

3. Jonathan Wild was tried O. B. sessions May 1725, for privately

stealing a box of lace in a shop, but acquitted; he was however immediately arraigned and *convicted* on the above stat. for receiving money as a reward from the prosecutrix for helping her to such box so stolen by Kelly, *who was also examined as a witness on the part of the Crown on this second indictment*, it appearing by the evidence of Henry Kelly *the principal felon who had actually stolen the lace, and who was admitted an evidence for the Crown*, that Wild was not in the shop at the time but only waited at the corner of a street to receive the goods.

R. v. *Jonathan Wild*, Leach. 21.

THREATENING LETTERS.

1. The statute 9 G. 1. c. 22. respecting threatening letters is not repealed by the stat. 30 G. 2. c. 24. for the former stat. extends only to cases where there is an *actual demand*, and the latter only to such cases where *no demand is made*, and includes letters sent *with a view to extort money*, though no demand is made.

   R. v. *Robinson*, Leach, 869.

2. A bank note is a *valuable thing* within the meaning of 9 G. 1. c. 22.

   R. v. *Robinson*, 2 Leach C. L. 869.

3. A letter signed by two letters as R. R. is a letter without *a name* subscribed thereto within 9 G. 1.

   Ibid.

4. It is a sufficient *demand* within the stat. to send a letter signifying that if a bank note is not transmitted, a libel will be published imputing the crime of murder to the party from whom the note is attempted to be obtained. *Ibid.*

5. A letter threatening to accuse a person of an unnatural crime unless he redelivered to the writer a *promissory note*, which he had before given him in discharge of a debt is not within the stat. 30 G. 2. c. 24. the words of that statute being *money, goods, wares or merchandises.*

   R. v. *Major*, 2 Leach, 894.

6. A man and his wife being indicted on stat. 9 G. 1. c. 22. and 27 G. 2. c. 15. it appeared that the wife had *written* the letter, and that the husband pretending to have found it *delivered* it to the prosecutor; there being no evidence to shew that the husband had any knowledge of the contents of the letter, and the Court directed the jury to acquit the husband, for he should have been indicted under stat. 30 G. 2. c. 24. making it a *misdemeanor* knowingly to deliver a threatening letter; and as to the wife they said that if the jury were of opinion that she wrote the letter herself without any interference of her husband, and *sent* it by him without his knowing any thing of the contents, she alone might be found guilty, but otherwise both must be acquitted, and under this direction the jury found them both not guilty.

   R. v. *Jno. & Mary Hammond*, Leach, 499.

7. Where the threats in a letter do not directly import the intent to kill or murder, it is the province of the jury to judge from all the circumstances of the case whether any less was meant by the threats than to kill or murder.

   R. v. *Girdwood*, Leach, 169.

8. Proof of a prisoner's delivering a threatening letter sealed up to a person to carry to the post office is evidence of his knowledge of its contents, if the jury so find it.

   Ibid.

9. Where a threatening letter was put into the post in London and received by the prosecutor in Middlesex, the prisoner may be tried in Middlesex for the fact of sending the letter. *Ibid.*

TRADES (EXERCISING.)

1. A man may exercise as many trades as he has worked at or served to seven years.

   French q. t. v. *Adams*, 2 Wils. 168.

2. If a person serves an apprenticeship any where, even beyond sea,

it is sufficient to enable him to use the trade in England.

R. v. *Fox*, Salk. 66.

3. So if he serves a seven years apprenticeship beyond sea though never bound it is sufficient.

Frith or Froth v. *Torin*, Salk. 67. Ld. Raym. 738.

4. Exercising a trade seven years without any prosecution will effect a sufficient qualification for the future,

Waller q. t. v. *Holton*, 1 Blackst. 233.

5. Indictment for exercising a trade not having served an apprenticeship cannot be taken at the sessions of a town corporate.

Reid's case, 3 Salk. 350.

6. The sessions of a city and town corporate have jurisdiction to try an indictment for exercising a trade contrary to 5 Eliz. c. 4.

R. v. *Strong*, Burr. Rep. 252.

R. v. *Franklin*, 1 Salk. 370.

7. There is nothing in the act 5. Eliz. which restrains the offence being laid in a city, market town or corporation, and if it be laid in a *parish it will not affect the* EVIDENCE.

Ball q. t. v. *Cobus*, Burr. Rep. 366.

8. The sessions of a borough have no jurisdiction to take an indictment on 5 Eliz. c. 4. because that statute does not give them jurisdiction, and they have none by statute.

R. v. *Taylor*, Ld. Raym. 767.

9. An indictment on stat. 31 Eliz. c. 5. may be preferred at the sessions of a borough.

R. v. *Franklyn*, Ld. Raym. 1038. 1 Salk. 370. 3 Salk. 351.

10. An indictment for exercising a trade in which defendant had not been *educated* for seven years, without the word *apprentice*, is ill, for it is a material word of the statute.

R. v. *Franklyn*, Ld. Raym. 1179.

11. The Court upon motion refused to quash an indictment on 5 Eliz. c. 4. for exercising the trade of a felt maker, upon the ground that it was not a trade used at the time of the making of the act, it being averred in the indictment that it was a trade used at the time of the stat. and whether it were or were not a trade then is a matter of fact proper to be tried by a jury, and the King's Bench cannot take notice whether it was a trade within the statute or not, for there are several within the general words and equity of the statute besides those there mentioned.

R. v. *Slaughter*, 1 Ld. Raym. 513. 2 Salk. 611.

12. The Court will quash an indictment on this statute if it does not appear to be one which was exercised at the time of the making of the statute.

R. v. *Harper*, Ld. Raym. 1188. 2 Salk. 610.

13. But if it is averred in the indictment to have been a trade used at the time of the making of the statute, the Court will not on motion quash the indictment, for if it were not a trade within the statute the defendant would have the advantage of it upon not guilty pleaded.

R. v. *Cornish*, Ld. Raym. 1188. 2 Salk. 610.

14. Indictment against six jointly and severally for exercising a trade, quashed, because there ought to be distinct indictments.

R. v. *Weston & al.* Stra. 613.

15. An indictment on 5 Eliz. c. 4. wherein it was averred to be a trade used at that time within *Great Britain* instead of *England*, was quashed for that error.

R. v. *Hotch*, Stra. 552.

16. In an indictment on this statute the stile of the king was *magnæ Britanniæ*, and the trade laid to be exercised at the time of the stat. *infra hoc regnum* must refer to *magnæ Britanniæ*, whereas by the words of the statute it must be used in England, and for this fault the indictment was quashed.

R. v. *Lister*, Stra. Rep. 788.

17. A defendant convicted on an indictment on 5 Eliz. at the assizes, which proceedings were removed into B. R. by *certiorari*, may pay the penalty into Court without costs.

R. v. *Strong*, Burr. Rep. 431.

18. For by 3 & 6 W. & M. c. 11, s. 3.

no costs are payable upon removal of proceedings by *certiorari*, but upon indictments brought by the *party grieved*, or upon proceedings by justices &c. or other civil officers prosecuting as such. *Ibid.*

19. In an indictment on 5 Eliz. c. 4. s. 31. for exercising the occupation of a tanner it is not necessary negatively to aver the want of other qualifications, which by a subsequent statute (1 Jac. 1. c. 22. s. 5.) entitle a person so qualified to use the trade, but such *other qualifications* or *exceptions* must be shewn by the defendant by way of excuse.

R. v. *Pemberton*,
Burr. Rep. 1035.

TRANSPORTATION.

1. A sentence of transportation may be a second time passed upon a prisoner, to commence from the period of the expiration of his former sentence.

R. v. Bath, Leach, 495.

2. Qu. If a person who is convicted of a clergyable felony and receives judgment of transportation, but is pardoned on condition of transporting himself, and giving security so to do, can be convicted of the *capital* felony, or ought to be *remitted to his former sentence*, on his breaking the subsequent condition on which the pardon was granted.

R. v. *Aickles*, Leach, 435.

3. A prisoner convicted of a capital crime whose sentence is respited during the king's pleasure, and who accepted a pardon *on condition* of transportation for life, and is afterwards found at large without lawful cause, will by the order of the Court be referred back to his sentence of transportation without an indictment being preferred against him for the new felony.

R. v. *Madan*, Leach, 263.

4. The king's sign manual may be given in evidence on an indictment for returning from transportation, and if the condition of it has been *literally* complied with, the prisoner will be remitted to his former sentence.

R. v. *Miller*, Leach, 86.

TREASON.

I. *Of the Treason and Overt Act.*
II. *Evidence of the Fact.*
III. *Commitment for High Treason.*
IV. *Form and Copy of Indictment.*
V. *Trial, Attainder, and Judgment.*

I. *Of the Treason and Overt Act.*

1. An attempt by intimidation and violence (by assembling a great multitude of people and encouraging them to surround the two houses of parliament) to force the repeal of a law, is a levying war against the king, and high treason.

R. v. *Gordon (Lord Geo.)*
Dougl. 590.

2. Any intelligence sent to the enemy in order to serve them in shaping their attack or defence, though its object be to dissuade them from an invasion, is high treason.

R. v. *W. Stone*, 6 T. R. 529.

3. Some words spoken without relation to any act or project are not treason; but words of persuasion to kill the king are overt acts of high treason; so is a consulting how to kill the king; so if two men agree together to kill the king; for the bare imagination and compassing makes the treason, and any external act that is a sufficient manifestation of that compassing and imagining is an overt act, it was never yet doubted; but to meet and consult how to kill the king was an overt act of high treason.

Charnock's case, 2 Salk. 631.

II. *Evidence of the Fact.*

1. A conviction of any high treason may be upon the evidence of one witness, where there is no corruption of blood.

R. v. *Gahagan*, Leach, 50.

2. The rough drafts of letters proved to be the prisoner's own hand writing, and found in a bureau where he kept his linen and papers,

are by those facts sufficiently proved to be his, or in his custody, as to entitle the crown to have them read as evidence against him in high treason.

R. v. *Hensey, (Dr.)* Burr. Rep. 643.

3. If an indictment for compassing and imagining the king's death and adhering to his enemies be laid in Middlesex, the *venue* is sufficiently supported by proving that one of the letters written by the prisoner containing advice and intelligence to the enemy was dated from *Twickenham*, which is in Middlesex.

R. v. *Hensey, (Dr.)* Burr. Rep. 643.

4. Letters of advice and correspondence and intelligence to the enemy written and sent in order to be delivered to the enemy, are *though intercepted*, overt acts of compassing and imagining the death of the king and adhering to his enemies. *Ibid.*

5. On indictment for high treason in sending intelligence to the enemy, a letter sent by one of the conspirators in pursuance of the common design, with a view of reaching the enemy, is evidence against all engaged in the same conspiracy.

R. v. *W. Stone*, 6 T. R. 527.

6. Upon an indictment for high treason laid to be at divers days and times, as well before as after evidence, may be given of any matters at any time, as well before as after the day specified in the indictment, provided it be not after the time the indictment was found.

Charnock's case, 1 Salk. 287.

III. *Commitment for High Treason.*

1. A secretary of state may commit for high treason.

R. v. *Kendall and Row*, 1 Lord Raym. 65. 1 Salk. 346.

2. If a gaoler return to an *hab. corp.* a commitment for rescuing a traitor committed to a messenger, the Court will intend that the commitment to the messenger was for the purpose of conveying the traitor to gaol, which it is lawful to do. *Ibid.*

3. A commitment for rescuing a traitor (by breaking the prison) ought to specify the treason for which the traitor was committed, for he who breaks the prison is guilty of the *specific treason*. *Ibid.*

4. A commitment for treasonable practices is legal.

R. v. *Despard*, 7 T. R. 736.

IV. *Form and Copy of Indictment.*

1. On an indictment for high treason it must appear that the criminal owed allegiance to the Crown, and upon this ground an attainder for high treason was upon error brought reversed, because the record did not contain the words *contra ligeantiæ suæ debitum.*

R. v. *Tucker*, 1 Ld. Raym. 1. East. P. C. 115. 2 Salk. 630.

2. And this omission is not supplied by the words *ligiantium suum minime ponderans*, and by other words which followed after *contra dominum regem verum naturalem et supremum dominum suum.*

1 Ld. Raym. 1.

3. A natural born subject being indicted for treason *contra ligeantiæ suæ debitum*, held well.

Cranburn's case, 2 Salk. 631.

4. In an indictment for compassing the king's death the treason being first laid *proditorie* the overt act need not be so laid also. *Ibid.*

5. An indictment for treason in levying war or adhering to the king's enemies generally, without shewing particular instances, is bad.

Vaughan's case, 2 Salk. 634.

6. And qu. whether those that are alledged ought not to be proved, and no others. *Ibid.*

7. Stating and proving that they did navigate a certain vessel and cruize with a design to destroy the king's ships, is sufficient without proving any actual fighting or act of hostility. *Ibid.*

8. A person indicted for high treason is entitled to a copy of the indict-

ment, and lists of the witnesses for the crown and of the jurymen who *are to be* returned upon the pannel, ten days before his arraignment.

R. v. *Gordon*, Dougl. 590.

9. If a party plead to an indictment for high treason without having had a copy, he thereby waives his right, and the Court will not grant him a copy afterwards.

Cook's case, 2 Salk. 634.

V. *Trial, Attainder, and Judgment.*

1. A person was tried at bar in Westminster Hall for high treason in raising a rebellion in America, and held that the trial was good by virtue of stat. 25 H. 8. c. 2.

3 Salk. 358.

2. An attainder of treason by commission on 28 H. 8. c. 15. works corruption of blood.

R. v. *Morphes*, 1 Salk. 85.

3. An attainder of high treason (by the prisoner pleading guilty) reversed on error brought, because it did not appear he was asked what he had to say why judgment should not be given against him, for he might have matter to move in arrest of judgment, or a pardon.

R. v. *Geary*, 2 Salk. 630. 13 Salk. 358. by the name of *R.* v. *Speke.*

4. And all the precedents are with an *allocutus quid* or *si quid pro se dicere habeat* &c. *Ibid.*

5. Upon a writ of error brought the judgment upon an indictment for high treason was reversed, it being *quod interiora extra ventrem trahentur* but the words *in conspectu ejus et ipso vivente cumburentur* were omitted, for *in conspectu* &c. is a necessary part of the judgment.

R. v. *Walcot*, 2 Salk. 632.

TREASONABLE WORDS.

1. A person is criminally punishable for saying king Charles the first was rightly served in having his head cut off and it was a pity his two sons Charles and James were not served so too at the same time, for these words justify regicides, and the murder of Charles the first is declared by statute 12 Car. 2. c. 30. to be murder.

R. v. *Taylor*, 1 Ld. Raym. 879. 3 Salk. 198.

2. Two persons (students of Oxford) who had spoken treasonable words in the streets of Oxford, having been convicted thereof on an information filed by the Attorney General, were sentenced to be fined five nobles each, to be imprisoned two years, to find sureties for seven years themselves in £500. each, and two sureties in £250. and to go round immediately to all the courts in Westminster Hall with a paper on their foreheads denoting their crime.

R. v. *Whitmore and Dawes*, Bl. Rep. 37.

TRIAL.

I. *Arraignment.*
II. *Entering Traverse.*
III. *Trial at Bar.*
IV. *Putting off Trial.*
V. *New Trial.*

I. *Arraignment.*

1. Arraignment may be without holding up the hand.

R. v. *Radcliffe*, 1 Bl. Rep. 3.

2. A prisoner on his arraignment is not entitled to have his fetters taken off till the jury are charged to try him.

R. v. *Waite*, Leach, 43.

3. But on his pleading and being put upon his trial the Court immediately ordered his fetters to be knocked off. *Ibid.*

4. If a person indicted for murder stand mute upon his arraignment, the Court may direct the sheriff to return a jury *instanter* to try whether he stand mute obstinately or by the visitation of God, and if they find that he stand obstinately mute, sentence of death may be immediately passed on him, which

was done in this case, and he was executed accordingly.
R. v. *Le Mercier, alias Le Butte*, Leach, 216.

5. A prisoner *mutus et surdus à nativitate*, and so found to be by a verdict of the jury, may be arraigned and tried for a capital offence, if it appear that he is capable of receiving intelligence by means of signs.
R. v. *Jones*, Leach, 120.

6. In the above case the prisoner was convicted of the simple larceny, and received sentence to be transported. *Ibid.*

7. See a similar case *R.* v. *Steel*, Leach, 507. which was referred to the consideration of the Judges, who all held that a verdict finding the prisoner mute by the visitation of God was not an absolute bar to her being tried on the indictment, for although a person *surdus et mutus à nativitate* is in contemplation of law incapable of guilt, upon a presumption of idiotism, yet that presumption may be repelled by evidence of the capacity to understand by signs and tokens; but if all means to convey intelligence to the mind of such a prisoner respecting the nature of his arraignment should prove ineffectual, the clerk of the arraignment might enter the plea of not guilty, and then it would be incumbent on the Court to inquire touching all those points of which the prisoner might take advantage himself, to examine all the proceedings against him with a critical eye, and to render him every possible service consistent with the rules of law. *Ibid.*

8. In *Steel's case* also the prisoner was convicted and sentenced to seven years transportation.
Leach, 509.

II. *Entering Traverse.*

1. On an indictment being found for an assault, if the defendant on his arraignment plead *not guilty*, enter into a recognizance to appear, *enter and try his traverse* at the next assises, he cannot by surrendering himself be tried under the gaol commission without first taking up the issue book and entering his traverse.
R. v. *Kelsey Fry*, Leach, 129.

2. But on reference in this case to the Judges, they thought that the defendant might have come in and moved to withdraw his plea of not guilty and have pleaded guilty, without entering his traverse, either on agreement with the prosecutor or on giving him notice of his intention so to do; and that if before he come in to plead, he had given the prosecutor ten days notice that he would at the same time try his traverse, he might do it. *Ibid.*

III. *Trial at Bar.*

1. Before the Court will grant a trial at bar on an information filed by the Attorney General, but not carried on at the expense of the Crown but of a private individual there must be the usual requisites made out to bring it to the bar.
R. v. *Hales*, Stra. 116.

2. But if the king give authority to prosecute it will be granted as of right. *Ibid.*

3. In capital cases the Court of K. B. will not appoint a day for trial at bar, unless the defendant is present.
R. v. *Johnson*, Stra. 896.

4. A trial at bar was granted upon an information against the defendants for taking a fee to register a warrant of attorney contrary to the lottery act, which says that no such fee shall be taken where the consequences of a conviction were very penal.
R. v. *Foley & Harley*, Stra. 51.

5. But the Court said the defendants ought not to pray a trial at bar in an *issuable term*. *Ibid.*

6. The Court granted a trial at bar on an information against a justice upon an affidavit that the defendant was worth 700*l. per ann.* and that there were above 30 witnesses for the prosecutor.
R. v. *Johnson*. Stra. 645.
See *R.* v. *Wakefield* and *R.* v. *Harly* there cited.

7. If it had been an information exhibited by the Attorney General

he would have had a right to bring it to the bar if he had thought fit.
Ibid.

IV. *Putting off Trial.*

1. The Court of K. B. will not put off either a civil or criminal trial upon the common affidavit of the absence of material witnesses, unless it appears upon *all* the facts of the case taken together, that justice will be furthered by putting off the trial, or hindered by not doing so.
R. v. *Chevalier D'Eon*, Burr. Rep. 1514.
2. The Court of K. B. refused to put off the trial of an indictment for a nuisance in stopping up a highway, till the trial of an information against persons who had printed and published a pamphlet calculated to instruct the witnesses and jury who were to appear on the trial of the indictment for the nuisance.
R. v. *Gray*, Burr. Rep. 510.
3. The Court will not put off the trial of a person attainted of high treason upon his affidavit of the absence of witnesses, who if present would be able to prove he was not the person attainted, but will proceed to judgment, unless the prisoner will himself make affidavit that he is not the person attainted.
R. v. *Radcliffe*, Bl. Rep. 3.
4. The Court upon application of the defendant postponed the trial of an information for a misdemeanor, upon the defendant's consenting by writing under his hand to the examination upon interrogatories of a witness for the crown about to leave the kingdom.
R. v. *Morphew*, 2 Man. & Sel. 602.
5. A defendant in a case where the king is party, cannot carry down the nisi prius record to trial by proviso,
R. v. *Dyde & al.* 7 T. R. 661.

V. *New Trial.*

1. In case of felony no new trial can be granted. 6 T. R. 638.
2. But in the case of a misdemeanor the Court are not fettered with any rules in granting a new trial, but will either grant or refuse a new trial as it will tend to the advancement of justice. 6 T. R. 638.
3. Where several defendants are tried at the same time for a misdemeanor, some of whom are acquitted and some convicted, the Court may grant a new trial as to those convicted, if they think the conviction improper.
R. v. *Mawbey (bart.) et al.* 5 T. R. 619.
4. All the defendants convicted upon an indictment for a conspiracy must be present in court when a motion for a new trial is made on behalf of any of them.
R. v. *Teal & al.* 11 E. R. 307.
5. A new trial may be granted in an information in nature of a *quo warranto*.
R. v. *Francis*, 2 T. R. 484.
6. A defendant convicted on a criminal prosecution, cannot move for a new trial after the first four days of the next term; though if it appear to the Court at any time before judgment that injustice has been done by the verdict, they will interpose and grant a new trial.
R. v. *Holt*, 5 T. R. 436.
7. The Court refused to grant a rule *nisi* for a new trial after a verdict for the defendant upon an indictment for non-repair of a church-yard fence, which was moved on the ground of the verdict being against evidence.
R. v. *Reynell, Clerk*, 6 E. R. 315.
8. A criminal motion being put off til the validity of a rate should be tried in a feigned issue "whether it was an equal or a partial one," and a verdict having passed for the defendant on such issue, the Court refused a new trial because it was within the *same reason* as if it had been in a criminal prosecution; for if the rate had been found to be partial, the consequence would have been either an attachment or an information; and it was just the same thing as if it had been a verdict found for the defendant *upon an information*; and if it had been upon an information the Court would not have set aside the verdict and gran

ed a new trial, although the acquittal had been contrary to evidence.

R. v. *Praed or Edwards*, Burr. Rep. 2257.

9. A defendant convicted of forgery must be present in Court when a new trial is moved for the same, as as on a motion in arrest of judgment.

R. v. *Gibson*, Stra. 968.

VAGRANTS.

1. A person committed as a *rogue and vagabond* under stat. 23 G. 3. c. 88. who breaks goal, and on being committed as an *incorrigible rogue* under 17 G. 2. c. 5. breaks gaol a second time and then commits a new act of vagrancy as *a rogue and vagabond*, may be indicted for felony under stat. 17 G. 2. c. 5. s. 9. and transported.

R. v. *Ballie*, Leach, 439.

2. One convicted upon stat. 33 H. 8. c. 9. s. 16. of playing at bowls, is not punishable as a disorderly person under stat. 17 G. 2. c. 5.

R. v. *Clarke*, Cowp. 35.

VARIANCE.

1. In an information for a libel stating *secundem tenorem sequent.* a variance in the word, *not* for *nor* held fatal though the sense was not altered thereby.

R. v. *Drake* (Dr.) 2 Salk. 660. 3 Salk. 224.

2. If an indictment for perjury on an affidavit that the party "understood and believed," &c. state it that the deponent "undertood and believed," &c. omitting the letter *s*, yet this variance is not fatal, for the omission of the letter does not make it another word.

R. v. *Beech*, Leach, 158.

3. If a *mittimus* whereby an information is sent for trial in a county palatine, varies from the record, a verdict given on such an information will be set aside.

R. v. *Higginson*, 1 Ld. Raym. 537.

4. Where it was mentioned to be part of the condition of a recognizance recited in a *sci. fa.* for that defendant should give notice of trial to the prosecutor and his clerk on the condition of the recognizance entered upon an oyer prayed was, that defendant should give notice to prisoner or his clerk, this was held a fatal variance.

R. v. *Ewer*, 2 Ld. Raym. 756.

5. If there be a mark to an assignment of a lease charged to be forged, and in setting it out on the postea the mark is omitted, it is a fatal variance.

R. v. *Ewer*, 2 Ld. Raym. 756.

6. On an information under a private statute, a misrecital of the commencement of the parliament is fatal, after verdict on the plea of not guilty.

Boyce v. *Whitaker*, *H.* 19 Geo. 3. K. B. 1 Doug. 97. *n.*

7. If upon an indictment on 9 G. 1. c. 22. for maliciously shooting at the prosecutor in the dwelling house of *James* B. it turns out in evidence to be the dwelling house of John and not of James, it is a fatal variance. *R.* v. *Durore*, Leach, 390.

8. Though perhaps it is not necessary in such an indictment to aver whose house it was, for the act says "who shall maliciously shoot at any person in any dwelling house *or other place*;" but having averred the fact, the prosecutor is bound to prove it as laid. *Ibid.*

VENUE.

1. The king cannot by charter authorize the trial of crimes out of the county where they were committed.

R. v. *Gough*, Dougl. 791.

2. Murder and felonies in any part of Wales may be tried in the next English county.

R. v. *Athoe*, 1 Stra. 553.

3. A felony committed in Angleses may be tried in the county of Salop, as the next adjoining English county to Wales.

R. v. *Parry and Roberts*, Leach, 125.

4. Chester is not properly speaking

an English county, and the king's writ does not run there. *Ibid.*

5. The constant practice has been to consider Salop as the next English county. *Ibid.*

6. A ward of a city is no *venue*; therefore the *venue* is from the city.
1 Rol. 334. cited by Holt, Ch. J. 2 Salk. 452.

7. A jury may come from *a lieu conus* out of a city, but not from *a lieu conus* within a city. *Ibid.*

8. A parish shall be intended a vill *prima facie*, 2 Salk. 501. So if a place be named generally it shall be taken to be and intended a vill. *Ibid.*

9. An indictment for perjury laying the offence to have been committed "at the Guildhall of the city of London" is bad, for the venue must be laid in some *parish* or *ward*.
R. v. *Harris*, Leach, 928.

10. A parish shall be intended a vill till the contrary appears, and there is no difference between a parish and a vill, but if a parish should contain more than one vill, that yet shall not be intended till shewn.
Wilson's v. Laws, 1 Ld. Raym. 20. 1 Salk. 59, 60. 3 Salk. 380.

11. Evidence upon an indictment is not tied up to any particular place, but it is sufficient that the fact charged be proved to have been committed any where within the county.
Charnock's case, 1 Salk. 287.

12. Where a mail was robbed of letters some time during the journey, but it did not appear in what county the offence was committed, and the jury find that it was not committed in the county laid in the indictment, the prisoner must be acquitted
R. v. *Thomas*, Leach, 723.

13. An information for an assault was laid in Middlesex, and the Court refused to amend it by laying it in London.
R. v. *Clendon*, Stra. 911.

14. The Court of K. B. will not allow the venue of an information against two aldermen of a city for a misdemeanor, to be changed from the county of such city to the county at large upon the affidavits of the defendants, in which they swear merely that they *verily believed* that they could not have a fair and impartial trial by a jury of the city, without giving any particular reason for entertaining such belief, especially there being returned a jury pannel of above 600 persons duly qualified to serve on juries in the city.
R. v. *Harris et al.* Burr. Rep. 1331. Bl. Rep. 378.

15. Perjury being alledged to have been committed in the Booth Hall, within the *limits of the county of Gloucester*, which is a county of itself: on the trial of a cause before a jury of the *county at large*, the indictment may be found and tried by juries of the county at large.
R. v. *Gough*, *Dougl.* 791.

VERDICT.

1. If upon a special verdict the jury find that A. having money in his hand, B. strikes his hand by means whereof the money fell on the ground, which A. attempted to take up, but was prevented through fear created by threats used to him by B. and that thereupon B. *then and there immediately* took up the money and rode off with it; thus finding is not sufficient to fix the crime of robbery upon the prisoner, inasmuch as it does not shew that the taking was in *the presence* of the prosecutor, which is a necessary ingredient in robbery.
R. v. *Francis et al.* Stra. 1015.

2. And the Court said that the whole rested on the word *immediately*, *then and there* serving only for a venue; and *immediately* was a word too loose and uncertain. In Stephens's Thesaurus it is rendered *cito et celeriter*; in Cowper *by and by*; and in other dictionaries *sine dilatione* and *presently*. In legal proceedings it does not exclude all *mesne* times and *mesne* acts. In Oneby's verdict it is used five times to different purposes; in Mawgridge's twice. On the statute 27 Eliz. c. 13. s. 11. the notice for hue and cry must be

in convenient time; and yet on declaring you aver that it was *immediate*, which is supported by proof of a convenient time. *Ibid.*

3. If a jury by a special verdict on an indictment against a defendant for three distinct facts, 1. for forging a bond, 2. for publishing *such* bond, and 3. for publishing *a* bond knowing it to be forged, find that the defendant forged a bond and published the same, but say nothing about the third offence, and refer it to the Court whether the defendant is guilty of the facts charged in the indictment, the Court will adjudge him guilty of the forgery and first publication, and not guilty of the rest.

R. v. *Hayes*, Stra. 843. Ld. Raym. 1518.

4. A special verdict in criminal cases must find that the fact was committed in the same county as that which is laid in the indictment, or no judgment can be given therein.

R. v. *Hazell*, Leach, 406.

5. A special verdict in a criminal case may be amended by the minutes taken at the trial. *Ibid.*

6. If in a special verdict on an indictment for murder, the jury find that the parties exchanged blows before the mortal wound given, though they do not expressly state who gave the first stroke, if it can be collected from the order in which the facts are stated it will be sufficient.

R. v. *Keite*, 1 Ld. Raym. 138.

7. A special verdict on an indictment for *felony* cannot, as in civil cases, be amended by the judge's notes. *Ibid.*

8. Upon a general verdict for the crown on an information for subornation of perjury, though some of the assignments are bad yet if any one of them is good the Court will give judgment for the crown.

R. v. *Rhodes et al.* Ld. Raym. 886.

9. If there be a *general* verdict upon an indictment containing several counts for a libel, if one of the facts charged appear not to be a libel, yet the Court will not arrest judgment upon that account, but will give judgment on that part which is indictable.

R. v. *Benfield and Saunders*, Burr. Rep. 986.

10. Upon an information against the defendant for printing and publishing a libel with a *malicious and criminal intent*, the jury found him guilty of *printing and publishing* ONLY, and the Court said if the jury meant to say "they did not find it a libel," or "did not find the *epithets*," or "did not find any *express* malicious intent," it would not affect the verdict, because *none of these things* were to be proved or found *either* way.

R. v. *Woodfall*, Burr. Rep. 2668.

11. If by *only* they mean to say, "that they did not find the *meaning* put upon the paper by the information," they should have ACQUITTED him. *Ibid.*

12. If the jury could possibly mean *that* which if *expressed* would *acquit* the defendant, he ought not to be concluded by a verdict. *Ibid.*

13. If a person who is servant to a gaoler confines a prisoner against his will in an unwholesome room, without allowing him the necessaries of a chamber pot &c. whereby he contracts a distemper of which he dies, this is murder in the party doing it; but if a special verdict only finds, "that the principal knew the condition of the room for 15 days before the death of the deceased, and that he was within that time once present and saw the duress of the deceased and turned away," sufficient facts are not found to amount to murder in the principal; for by this verdict the jury does not say that he directed the deceased to be put into the room, that he knew how long he had been there, that he was without the necessaries in the indictment, or was ever kept there after the time the prisoner saw him, which was 15 days before his death.

R. v. *Huggins*, Stra. 882. Ld. Raym. 1574.

14. It is no ground to set aside a verdict upon an information for extor-

tion, that papers relative to the merits of the case were generally circulated, and that probably some of the jury might have seen them, and so might be induced to find the defendant guilty, unless the circulation be fixed upon the prosecutor.

R. v. *Burdett*, 1 Ld. Raym. 148.

15. It is irregular for the jury to take written evidence away with them without leave of Court or the counsel of the parties, but the matter being evidence on both sides it is not a sufficient ground whereon to set aside the verdict. *Ibid.*

WRITS.

1. A writ of *habeas corpus* is invalid unless signed by a judge.

R. v. *Roddam*, Cowp. 672.

2. Upon an indictment before justices of the peace in their quarter sessions, or before justices of oyer and terminer, there must be 15 days before the teste and return of the *venire facias;* but if the entry be *ex assensu partium* then the *ven. fac.* may be returnable immediate before the justices of the peace.

3 Salk. 371.

3. But before justices of oyer and terminer and gaol delivery, an indictment may be found and tried the same day, for they may award a *ven. fac.* returnable *immediate*, and so may K. B. for all offences done in Middlesex, that being the county in which the Court sits, but not for offences done out of that county, because as to such it is not a Court of Oyer &c.

3 Salk. 371.

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